Docket No. A-97-43
Category XI-C-01

Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

(63 FR 24058, April 30, 1998; 63 FR 52213, September 30, 1998;
63 FR 56292, October 21, 1998; 64 FR 33956, June 24, 1999;
64 FR 43124, August 9, 1999; 64 FR 44452, August 16, 1999;
64 FR 50041, September 15, 1999)

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GLOSSARY OF TERMS

List of abbreviations and acronyms which may be used in this document

ACAP-Alliance for Constructive Air Policy
AEP-American Electric Power
AMP-American Municipal Power
ANPR-Advance Notice of Proposed Rulemaking
April RTC-Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport, U.S. Environmental Protection Agency, Docket No. A-97-43, VI-C-01, April 1999.
ARIPPA-Anthracite Region Independent Power Producers Association
CAA-Clean Air Act
CAPI-Clean Air Power Initiative
CCAP-Climate Change Action Plan
CIBO-Council of Industrial Boiler Owners
CP&L-Carolina Power & Light
DC-District of Columbia
DE-Delaware
Dept.-Department
DEP-Department of Environmental Protection
DENR- Department of Environment & Natural Resources
ECAR- East Central Area Reliability Council
EDF-Environmental Defense Fund
EEI-Edison Electric Institute
EGU-electricity generating unit
EIA-Energy Information Agency
EPA-Environmental Protection Agency
°F-degrees Fahrenheit
FERC-Federal Energy Regulatory Commission
FIP-Federal Implementation Plan
FR-Federal Register
GW-gigawatts
ICAC-Institute of Clean Air Companies
IPM-Integrated Planning Model
IPP-independent power producer
KCPL-Kansas City Power & Light
LADCO-Lake Michigan Air Directors Consortium
lb/MMBtu-pounds per million British thermal units
LNB-low-NOx burners
MARAMA-Mid-Atlantic Regional Air Management Association
May 25 NFR-Notice of Final Rulemaking: Findings of Significant Contribution and Rulemaking

on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport (64 FR 28250, May 25, 1999)
MI-DEQ-Michigan Department of Environmental Quality
mmBtu-measured million British thermal units
MO-Missouri
MOU-Memorandum of Understanding
MW-megawatts
M.C.-municipal waste combustion
MW-megawatts electrical
N-nitrogen
NAAQS-National Ambient Air Quality Standards
NEOTR-Northeast Ozone Transport Region
NERC-North American Electric Reliability Council
NESCAUM-Northeast States for Coordinated Air Use Management
NFR-notice of final rulemaking
NO-nitric oxide
non-EGU-non-electricity generating unit
NOx-nitrogen oxides
NOx SIP Call NFR-Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone–Final Rule, 63 FR 57356, October 27, 1998.
NOx SIP Call RTC-Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone, U.S. EPA, Docket No. A-96-56, VI-C-1, September 1998.
NPR-notice of proposed rulemaking
NSPS-new source performance standards
NSR-New Source Review or Normalized Stoichiometric Ratio
OH-Ohio
OTC- Ozone Transport Commission
OTAG-Ozone Transport Assessment Group
OTR-Ozone Transport Region
ppb-parts per billion
ppm-parts per million
PSD- Prevention of Significant Deterioration
RACT-Reasonably available control technology
RCRA-Resource Conservation and Recovery Act
RFA-Regulatory Flexibility Act or Regulatory Flexibility Analysis
RIA-Regulatory Impacts Analysis
RTC-Response to Comments document
SBREFA-Small Business Regulatory Enforcement Fairness Act
SCR-Selective Catalytic Reduction
SIP-State Implementation Plan

SNCR-Selective Non-catalytic Reduction
SNPR-supplemental notice of proposed rulemaking
SO_2-sulfur dioxide
TVA-Tennessee Valley Authority
UARG-Utility Air Regulatory Group
West Virginia-WV

SECTION I
INTRODUCTION

This document, together with the notice of final rulemaking (NFR) on "Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport" and several separate documents referred to below, present the responses of the Environmental Protection Agency (EPA) to public comments received on four Federal Register notices related to this rulemaking (64 FR 33962, June 24, 1999; 64 FR43124, August 9, 1999; 64 FR 44452, August 16, 1999; and 64 FR 50041, September 15, 1999, as well as public comments received on three Federal Register notices related, in part, to the Federal NOx Budget Trading Program (Advance Notice of Proposed Rulemaking (ANPR), 63 FR 24058, April 30, 1998; Notices of Proposed Rulemaking (NPR), 63 FR 52213, September 30, 1998 ("short notice,") and 63 FR 56292, October 21, 1998).

The purpose of this rulemaking is to take action on petitions filed individually by eight Northeastern States under section 126 of the Clean Air Act (CAA). These States are seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, nitrogen oxides (NOx), across State boundaries. Each petition specifically requests that EPA make a finding that NOx emissions from certain stationary sources emit in violation of the CAA's prohibition on emissions that significantly contribute to ozone nonattainment problems in the petitioning State. The eight Northeastern States that filed petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

By notice dated May 25, 1999 (64 FR 28250), EPA determined that portions of the petitions are approvable under the 1-hour and/or 8-hour ozone national ambient air quality standards (NAAQS) based on technical considerations. However, EPA deferred making section 126 findings as long as States and EPA stayed on track to meet the requirements of the NOx State implementation plan call (NOx SIP call). Subsequently, two court rulings affected the May 25 final rule. In one ruling, the court remanded the 8-hour ozone standard. In a separate action, the court granted a motion to stay the SIP submission deadline for the NOx SIP call. In light of the court rulings, EPA is modifying two aspects of the May 25 rule. EPA is taking final action 1) to remove the automatic trigger mechanism in the May 25 rule, which is based on the NO_x SIP call deadlines, and instead make the findings in a final rule; and 2) to indefinitely stay the section 126 findings based on the 8-hour standard pending further developments in the NAAQS litigation

Based on affirmative technical determinations made in the May 25 rule, EPA is making section 126 findings that large electric generating units (EGUs) and large industrial boilers and turbines named in the petitions are significantly contributing to nonattainment or maintenance problems in the petitioning States. EPA is also finalizing the Federal NOx Budget Trading Program as the control remedy for sources affected by this rule. This requirement replaces the default remedy in the May 25 final rule. All significant issues raised in the public comments on the section 126 rulemaking have been addressed.

This document refers to various support documents, which are available in the docket for this rule (A-97-43) or the docket for the NOx SIP call rule (A-96-56), that have been prepared to assist in presenting the more technical aspects of the Agency's responses.

The responses presented in this document and in the separate documents referred to above are intended (1) to augment the responses to comments that appear in either the preamble to the May 25, 1999 final rule, the preamble to this final rule, or the preamble to the final NOx SIP call rule (63 FR 57356, October 27, 1998); or (2) to address comments not discussed in the preamble to this final rule. Although portions of the preamble to this final rule are paraphrased in this and other documents, where useful to add clarity to responses, the preamble itself remains the definitive statement of the basic rationale for the final rule.

In many instances, particular responses presented in the above documents include cross references to responses on related issues, either in those documents, in this final rule, or in the NOx SIP call NFR. In view of the number of comments received, the cross references may not always reflect the extent to which information relevant to a particular comment is contained in responses to other comments. Accordingly, the above documents as a group, together with this final rule, should be considered collectively as EPA's response to all of the comments submitted.

In some cases, this final rule contains the full response to comments, and such responses are not restated here. In those cases, a reference is made to the appropriate section of the final rule or the NOx SIP call NFR containing relevant responses. In many cases, in this document EPA has listed all of the commenters who made a specific comment. In other instances, the Agency may have identified one or a representative number of commenters. All docket numbers, unless indicated otherwise, refer to the docket for the section 126 rulemaking (A-97-43).

SECTION II
RESPONSE TO COMMENTS ON 126 CONTROL REMEDY:
THE FEDERAL NOx BUDGET TRADING PROGRAM

II.A.1: Appropriateness of Trading as a Section 126 Remedy, and Other General Trading-related Comments

SUMMARY: In the context of recent court rulings, commenters expressed support for promulgating a Federal NOx trading program for those areas found to be significantly contributing to non-attainment of the 1-hour standard. Other commenters generally expressed support for implementation of a NOx trading program as necessary part of a regional NOx reduction program for the control of ground-level ozone.

LETTERS: Missouri Department of Natural Resources (VIII-C-20), Clean Energy Group (VIII-C-23)

RESPONSE: See section IV.A. of "Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport", Docket Number A-97-43, VI-C-01, April 1999, p. 84-85, (hereafter referred to as the April 126 RTC) for an extensive discussion of the appropriateness of trading as a section 126 remedy. See also sections IV.A. and IV.C. of the preamble to the May 25, 1999 section 126 final rule, and section III.A. of today's section 126 final rule.

The EPA agrees with the commenters who expressed support for the proposed Federal NOx Budget Trading Program as both a necessary and appropriate remedy for the sources named in the section 126 petitions. The Agency also agrees with the commenters who specifically expressed support for the size of the NOx tonnage cap, the program's applicability, or the compliance date.

SUMMARY: One commenters noted that EPA should not implement a FIP-based trading program because it is inappropriate to use a FIP as a means to resolve the section 126 petitions.

LETTERS: Indian Department of Environmental Management (III-D-60)

RESPONSE: The EPA is using the section 126 final rule as a means to resolve the petitions under section 126 of the Clean Air Act.

II.A.2: Schedule Issues

SUMMARY: One commenter noted that EPA should minimize any delay in the promulgation of the NOx Budget Trading Program, especially since the SIP revisions that OTC States will be submitting in the fall will include provisions for a NOx Budget Trading Program.

LETTERS: OTC (VIII-C-11)

RESPONSE: See section II of the section 126 final rule on eight petitions.

Due to the indefinite stay of the NOx SIP Call, EPA has "decoupled" the findings under the section 126 petitions from the NOx SIP Call compliance schedule, and has granted the section 126 petitions relative to the 1-hour standard. The trading program will move forward in the context of these actions.

The EPA agrees that delay in the implementation of the trading program should be minimized. The EPA is cognizant of both the deadline for regulatory submissions by OTC States and the timeline for OTC integration into a broader NOx trading system under the SIP call or the section 126. Today's rule requires compliance with the NOx emissions limits under the Federal NOx Budget Trading Program by May 1, 2003. For a discussion of the rationale behind the May 1, 2003 compliance deadline, see the May 25 NFR (64 FR 28302-28305).

SUMMARY: One commenter noted that recent court rulings create significant uncertainty about being able to implement the trading program as scheduled. Therefore, a default remedy should be retained and should be applied in advance of the trading program, if necessary.

LETTERS: New Hampshire Department of Environmental Services (VIII-C-08)

RESPONSE: See section III.A. of the preamble to the section 126 final rule for the eight petitions.

On its face (and as discussed in the May 25 NFR), the default remedy set forth under §52.34(k) would only apply if the Administrator makes a finding under section 126 without first promulgating the specific provisions of the Federal NOx Budget Trading Program. Since both the section 126 findings and the details of trading program are being finalized simultaneously in the section 126 final rule on the eight petitions, the default remedy under §52.34(k) cannot be applied. Today's rule therefore removes that section.

II.B: Feasibility and Cost-Effectiveness of Controls

SUMMARY: Some commenters have argued that EPA must redo its analysis of the feasibility and cost-effectiveness of controls to reflect the modified scope of the section 126 rule due to the stay of the 8-hour findings. Commenters argued that EPA has underestimated the costs for utility NOx controls since several States and portions of States have been removed as a result of the stay of the 8-hour findings. In addition, one commenter stated that EPA should provide an opportunity to comment on a revised cost-effectiveness analysis that incorporates only the affected sources under the section 126 petitions based on the 1-hour standard.

LETTERS: Cinergy Corporation (VIII-C-16), VA Power (VIII-C-19), UARG (VIII-C-07)

RESPONSE: See section 126 final rule preamble, section I.B., for response to commenters.

SUMMARY: Commenter maintains that EPA has rejected a different level of control in the Midwest and Southeast in order to level the economic playing field with the Northeast.

LETTERS: MI DEQ (VIII-C-30)

RESPONSE: For EGUs named in the 8 petitions, EPA has determined that a uniform control level of 0.15 lb/mmBtu is highly cost-effective and, with trading, the appropriate remedy for the sources' significant contribution to the non-attainment problems of petitioning states. From its RIA analysis, EPA believes that either allowances will be purchased or controls will be placed on units throughout the section 126 region. Therefore, the burden of the rule will be shared throughout the power industry and the section 126 region. In the May 25, 1999 section 126 final rule (64 FR 28289-28290), EPA addressed the appropriateness of an uniform level of controls.

SUMMARY: Commenter argued that given that EPA has recognized the possibility of imposing section 126 requirements on a source-by-source basis without trading, the Agency's analysis must also evaluate the effect of such a control program. The commenter also argued that the Agency must investigate the cost-effectiveness of NOx reductions if each state individually met its emissions budget component through intra-state trading.

LETTERS: Cinergy Corporation, VIII-C-16, p. 15-16.

RESPONSE: For today's final section 126 rule, EPA is promulgating a federal trading program and thus has based its cost-effectiveness analysis assuming inter-state trading. As discussed in the section 126 proposed rule RIA, EPA considered the cost-effectiveness of NOx controls assuming only intra-state trading, based on analysis in the NOx SIP call. The cost increase for a program with 23 regions (where each of the jurisdictions covered by the NOx SIP call would be its own region and allowing trading only within each State or jurisdiction) compared to the 0.15 alternative was approximately two percent. This analysis is a strong indicator that inter-state trading will similarly reduce compliance costs in the section 126 region.

SUMMARY: Commenters argued that a May 1, 2003 compliance date is unreasonable and unsupportable. Commenters also argued that the May 1, 2003 compliance date provides insufficient time for compliance and may jeopardize the reliability of the electric grid, preclude the implementation of evolving technologies, and increase costs.

LETTERS: Consumers Energy (VIII-C-21), IDEM (VIII-C-36), MOG (VIII-C-28), UARG (VIII-C-07)**,** VA Power (VIII-C-19)

RESPONSE: EPA has determined that the compliance date of May 1, 2003 was feasible in the May 25, 1999 final rule (64 FR 28302-28305). See also April 1999 section 126 RTC document, section VI.C. EPA notes that the issue of the feasibility of the compliance date was not-reopened for this rulemaking. However, EPA continues to maintain that a May 2003 compliance date is feasible and will not effect electric system reliability. The docket for this final rule contains a recent report and memos supporting EPA's position that the section 126 rulemaking will not impact electric system reliability. See Docket #A-97-43, item #X-A-07. Furthermore, recent OTC experience indicates that a single unit SCR retrofit can be completed in less than one year, as opposed to the 21 months assumed in EPA's feasibility analysis. (See docket #A-97-43, item #X-A-04) Based on these findings, EPA believes that the compliance date of May 1, 2003 for NOx controls to be installed to comply with this section 126 rulemaking is a feasible and reasonable deadline. See also preamble at IV.A.4. (discussion of Compliance Supplement Pool).

SUMMARY: Commenter argued that a regional seasonal NOx emission cap and NOx trading program implemented by 2003 are necessary, cost-effective, and technically feasible. The commenter argued further that compliance by this date would have no impact on electric system reliability during periods of peak summer electricity demand. Commenter notes that its "reliability" report is publicly available and will be submitted to the docket.

LETTERS: Clean Energy Group (VIII-C-23, VIII-E-05)

RESPONSE: EPA agrees with the commenter's conclusions.

SUMMARY: Commenter argued that initially the OTR MOU is less stringent than the NOx SIP call requirements and not all of the OTR states are listed in the NOx SIP call. Therefore, early in the program, OTR states not subject to the NOx SIP call will have less stringent requirements than states outside of the OTR. The commenter argued further that due to the deregulation of the utility industry, this could be the most critical time for sources to determine market share and would be economically unfair.

LETTERS: VA DEQ (VIII-C-09)

RESPONSE: EPA notes that the OTC Phase II requirements go into effect in 2003, the same date as the compliance date for the section 126 and NOx SIP call. Phase II requirements call for NOx reductions similar to the section 126 reductions. Therefore, OTR States will not be subject to less stringent requirements.

SUMMARY: Commenter maintains that utility sources should not be disproportionately affected relative to other sources of emission (i.e., mobile and area sources). The commenter argues that errors and inconsistencies in the EPA inventories, as well as growth assumptions, have resulted in an emissions cap for utility sources that will effect emissions controls beyond the level of (85% reduction or 0.15 lb/mmBtu) EPA originally intended. As such, the commenter argues that these rulemakings will have far-reaching effects on future growth potential for the commenter, as well as industrial and residential customers. Commenter concludes that it is imperative that EPA make every effort to improve the accuracy and quality of its database.

LETTERS: Virginia Power (IX-D-80)

RESPONSE: The petitioning states have identified the sources that EPA must consider in this section 126 rulemaking. EPA maintains that it is highly cost-effective to control NOx emissions from such utility and large industrial sources. See section 126 final rule, section I.B. EPA has made every effort to improve the accuracy and quality of its database. See Appendix A of this document for response to comments on EGU/non-EGU inventory issues. See April 1999 section 126 RTC document, section V.A., for responses to growth assumptions.

SUMMARY: One commenter noted that since the Phase II program (OTC MOU) is now in effect starting May 1, 1999, EPA should include such measures in their cost-effectiveness analysis in the future.

LETTERS: Cinergy Corporation (VIII-C-16)

RESPONSE: EPA has not included the Phase II program in its cost-effectiveness analysis (see RIA Chapter 6). Inclusion of the Phase II program would reduce the cost of the section 126 program because many units would have already implemented SNCR and SCR controls to meet the more stringent requirements of Phase II. Thus, not including the Phase II program results in a higher more conservative cost estimate.

SUMMARY: Commenter reproduced EPA analysis of a NOx trading program done for the NOx SIP call. Commenter used the same NOx budgets as used in the EPA methodology and a Interregional Electricity Market Model (IREMM) which includes each generating unit in the eastern inter-connect. In place of EPA's costing methodology, commenter used actual operating experiences from one SNCR unit and two independent estimates for control options to meet 0.15 limit for 40 of commenter's units. Commenter's analysis, assuming interstate trading, found an average cost-effectiveness of $3,635/ton for the NOx SIP call and $3,816/ton for the section 126 rule. Based on this information, commenter concludes that EPA has underestimated costs for utility NOx controls.

LETTERS: Cinergy Corporation (VIII-C-16)

RESPONSE: EPA disagrees with commenter's conclusion that it has underestimated costs for utility NOx controls. EPA's cost-effectiveness analysis is based on the use of the Integrated Planning Model (IPM). IPM is a well established and well-known commercially available electric generation capacity planning model that can be used at a local, regional, or national level. Over several years, EPA's use of IPM has undergone extensive review and the Agency has made appropriate changes in response to public comments. See April 1999 section 126 RTC document, section V.A.1., p. 108, for further discussion of IPM.

EPA notes that the commenter has based its cost modeling using a model that includes only generating units in the eastern inter-connect, which is not the entire section 126 region. IPM includes generating unit data for the entire United States. While applying a NOx emissions cap to entire section 126 region, IPM projects the action of utilities in all 48 contiguous States in order to capture interactions among neighboring regions resulting from the existence of a national grid. The IPM analysis also covers a period starting in 2001 and running out to 2025. See RIA, Chapter for further discussion of IPM.

The commenter has based it cost estimates for control technologies on specific cases that apply to its own units. EPA has used cost estimates based on the average cost for NOx control retrofit. The potential cost impacts of differences in boiler characteristics and applicable control technologies have been accounted for in the IPM analysis used by EPA in estimating cost impact of the rule on EGUs. EPA acknowledges that the actual cost impacts will vary from utility to utility with the costs being lower for some and higher for others depending upon the generation mix, capacity, and initial NOx emission rates, and other relevant factors. However, EPA maintains that an average control cost value (not the commenter's site specific control costs) that is used in IPM is appropriate to apply on a regional or national level, especially where, as in this rule, trading is included in the remedy.

SUMMARY: One commenter noted that EPA should have considered direct, rather than alternative, energy efficiency reductions in its cost-effectiveness analysis by reducing the budgets and setting aside a specific amount of allowances for energy efficiency and renewables.

LETTERS: NH DES ((A-98-12, III-D-42), IV-D-36)

RESPONSE: EPA recognizes the importance of energy efficiency and renewable energy and has considered it in its cost-effectiveness analysis. The Integrated Planning Model used by EPA takes into account such considerations as demand-side management, Climate Change Action Plan, and the use of renewable technologies. The cost-effectiveness analysis is not impacted by the allocation method, rather it looks at the costs of imposing a total emission cap on the affected sources which are allowed to trade to meet that cap. See also section II.E.6. for energy-efficiency set-aside comment responses.

SUMMARY: Some commenters incorporated by reference their comments on alternative control strategies as submitted in response to the NOx SIP call. Some of these commenters supported various alternative strategies to EPA's proposal that would result in significant changes to the model rule component of the overall SIP call. These alternatives included the phase-in proposals submitted by ACAP and the Midwest/Southeast Governors Ozone Coalition, as well as other various proposals. One commenter opposed any phase-in approach because delaying or phasing in the NOx reductions will negatively impact the environment.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), Indiana Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), New Hampshire Department of Environmental Services (A-96-56, V-I-39 as incorporated by reference in IV-D-36), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-71)

RESPONSE: EPA rejects the commenters' alternative control strategies. See April 1999 section 126 RTC document, Section VI.A.

II.C.1: Applicability

SUMMARY: One commenter requested that EPA reconsider the current definition of an EGU as it relates to the section 110 and section 126 rulemakings. This commenter added that boilers with a maximum design heat input capacity less than or equal to 250 mmBtu/hour have the same impact on air quality whether or not they are connected to an electric generator and that classifying certain industrial boilers as EGUs because they are connected to a generator is inconsistent with previous regulatory treatment of these types of units.

LETTERS: RJ Reynolds (IX-D-67)

RESPONSE: The definitions of EGU and non-EGU were adopted in the May 25, 1999 final rule (64 FR 28295-28298). See April 1999 section 126 RTC document, Section IV.C. Today's final rule continues to use those definitions, as required by the May 25, 1999 final rule.

SUMMARY: One commenter noted that in § 97.2, the definition of "fossil fuel-fired" is open-ended and may lead to inconsistent participation in the NOx Budget Program for some sources. This commenter added that EPA should adopt a once-in, always-in approach, and at a minimum, should change the word "comprises" in paragraph (1) to "comprised."

LETTERS: New York Dept. of Environmental Conservation (III-D-49)

RESPONSE: See final rule preamble (section III.B.1.b) for response to this comment.

SUMMARY: One commenter requested clarification on EPA's treatment of sources that may burn fossil fuel only as a back-up. This commenter provided, as an example, boilers that are permitted to burn fossil fuel only if supplies of blast furnace gas or coke oven gas are in limited supply (and are capable of operating on 100% fossil fuels). This commenter requested that EPA clarify whether these types of boilers would be provided allowance allocations and adds that owners/operators of these boilers should not be required to purchase allowances during times when it is necessary to burn fossil fuel.

LETTERS: U.S. Steel (IX-D-133)

RESPONSE: As discussed in the final rule preamble (section III.B.1.b.), EPA's fossil fuel-fired definition is consistent with the approach taken in developing the final State trading inventories and budgets for EGUs and non-EGUs. The fossil fuel-fired definition excludes any boiler, combustion turbine, and combined cycle system that operated but did not combust over 50 percent fossil fuel in 1995 or 1996. Such, a boiler, combustion turbine, or combined cycle system continues to be excluded even if it combusts over 50 percent fossil fuel after 1996. Therefore, an owner of boiler would not be required to purchase allowances in the future if its boiler existed in 1995 or 1996 and fired less than 50 percent fossil fuel in 1995 and 1996.

However, EPA notes that in the commenter's example the boiler it is operating would be considered a fossil-fired unit when it is operating on blast furnace or coke oven gas. Process gas derived from fossil fuel combustion is a fossil fuel under part 97. See response to comments on section 126 inventory issues where this issue is addressed. Thus, an operating boiler that met the size criteria in §97.4(a) and that combusted over 50 percent blast furnace or coke oven gas in 1995 or 1996 would be fossil fuel fired and would be provided with allowance allocations as part of this rulemaking.

SUMMARY: One commenter noted that EPA should include non-EGU sources in the trading program.

LETTERS: KN Energy (IV-G-5)

RESPONSE: EPA has included non-EGU fossil fuel-fired boilers and turbines greater than 250 mmBtu/hour in the applicability provisions of the trading program.

SUMMARY: Some commenters noted that the applicability criteria listed in § 97.4 are inconsistent with the large non-EGUs listed in Appendix A (Table A-2) and/or Appendix B (Table B-2), and that these tables contain non-EGUs that should not be subject to the trading program. Commenters also point out that there is no reference in Part 97 to Appendix A and argue that the reference to Appendix A should be removed from §52.34 (a).

LETTERS: Celanese Acetate (III-D-38) (IV-D-30), Virginia Manufacturers Association (III-D-36), (IV-D-47)

RESPONSE: The final rule references Appendix A in §97.41(a) so that the reference in §52.34(a) does not create any confusion. With regard to the commenter's concerns that Appendix A and B may contain non-EGU that should not be subject to the trading program, EPA has addressed these comments in its responses to inventory comments. See *Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments to the Final NOx SIP Call*, US EPA, May 1999, Docket #A-96-56, Item #X-C-01.

II.C.2: Opt-in Provisions

SUMMARY: Commenters did not support a voluntary opt in program. One commenter incorporated by reference their comments submitted in response to the NOx SIP call not support allowing sources to opt-in to the trading program.

LETTERS: AECI (III-D-41), KCPL (IV-D-33, III-D-33), UtiliCorp (III-D-24), NGSA (IV-D-27, III-D-22)

RESPONSE: EPA is allowing certain, additional units to voluntarily participate in (opt-in) the trading program. See final section 126 rule preamble (section 111.B.1.d.) for response to comments.

SUMMARY: Commenters support voluntary opt-in program. Many of these commenters provided specific suggestions regarding opt-in provisions, such as allowing sources emitting to a stack in common with a source subject to Part 97 or other small and medium sources to opt-in if they are able to adequately monitor, report, and verify their emissions, and requiring opt-in sources to meet the reduction requirements for sources named in the section 126 petitions. Some commenters incorporated by reference their comments submitted in response to the NOx SIP call on the issue of individual opt-ins. Most of these commenters expressed support for individual sources with an adequate NOx emissions monitoring system to opt-in to the trading program.

LETTERS: AF&PA (II-D-37) and (A-96-56, V-H-93 as incorporated by reference in IV-D-21), CAWV (III-D-61), AMP Ohio (III-D-13, IV-D-17), Champion International Corporation (A-96-56, V-H-126 as incorporated by reference in IV-D-45), Cinergy (II-D-23), DuPont (A-96-56, IV-D-349 and V-H-176 as incorporated by reference in IV-D-73), GCSEP (III-D-57), Hamilton (OH) (III-D-65, IV-D-74), IL EPA (II-D-19, IV-D-5, III-D-9), IN DEM (III-D-60), MA-DEP (IV-D-8), MO DNR (IV-D-23), NY DEC (III-D-49), Orrville, Ohio, City of (A-96-56, V-H-52 as incorporated by reference in IV-D-85), PA DEP (II-D-26), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Springfield (MO) (IV-D-93, III-D-20), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), SJLP (III-D-52), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), VA Power (II-D-06, III-D-63, IV-D-80), West Virginia Chamber of Commerce (III-D-50), (IV-D-92), and (A-96-56, V-H-173 as incorporated by reference in IV-D-71), West Virginia Manufacturers Association, et. al. (A-96-56, V-H-102 as incorporated by reference in IV-D-60), WI DNR (III-D-43), WPC (III-D-35)

RESPONSE: EPA is allowing certain, additional units to voluntarily participate in (opt-in) the trading program. See final section 126 rule preamble (section 111.B.1.d.) for response to comments.

SUMMARY: Commenters favor minimizing source-specific opt-ins under section 126. One commenter maintains that if sources are allowed to opt-in on an individual source basis and claim reductions, the stringency of the cap would be decreased, because only those sources capable of achieving reductions would opt-in (the "cherry picking" effect). Commenter supports opt-in provisions if the cap is preserved. Another commenter does not support including in remedy sources outside those identified as contributing significantly under section 126. The commenter argued that if EPA or States chose to add additional sources or individual sources chose to opt-in, then these additional sources should not be allowed to substitute for required emission reductions from sources identified in the petition as contributing significantly. Furthermore, commenters argued that the required reductions should be federally enforceable with strong up-front penalty provisions for noncompliance.

LETTERS: NH DES (III-D-42, IV-D-36), NY DEC (II-D-05)

RESPONSE: EPA is allowing certain, additional units to voluntarily participate in (opt-in) the trading program. See final section 126 rule preamble (section 111.B.1.d.) for rationale. The opt-in provisions allow units that generate electricity or produce steam, but that are smaller than the size cutoffs for EGUs or non-EGUs and that are in a section 126 jurisdiction to enter the trading program. These units were excluded from being EGUs or non-EGUs because in general, their control costs are too high for their reductions to be considered highly cost-effective. Some individual small units may have lower control costs. The opt-in provisions reduce the cost of NOx reduction by allowing individual, small units to join the NOx Budget Trading Program and make incremental, lower cost reductions, freeing NOx allowances for use by other NOx Budget units while the cap is increased by the allowance allocated to opt-in units. This does not reduce the stringency of the NOx cap since the cap than covers emissions from both non-opt-in and opt-in units. EPA assures compliance by requiring each opt-in unit to hold allowances covering emissions and to meet the same monitoring requirements as other NOx Budget units. EPA's opt-in provisions thereby ensure that there is not an exceedance of the NOx emission cap.

SUMMARY: Commenters argued that opt-in provision is inconsistent with section 126 and cannot be resolution of these petitions. Commenters argued further that each petition must stand or fall on its own merit without consideration of any sources other than those named in each individual petition.

LETTER: AEP (IV-D-10), SC DHEC (II-G-02), Trinet (II-D-15)

RESPONSE: In granting the section 126 petitions, EPA found that the large EGUs and non-EGUs specified in the petitions contribute significantly to downwind non-attainment. At the same time, EPA determined that the small EGUs and non-EGUs specified by petitioning states did not contribute significantly, in part because it would not be highly cost effective and appropriate to mandate reductions from these smaller sources as a group. 64 FR 28301. Finally, EPA assumed trading in analyzing cost-effectiveness. However, the potential reductions and cost savings from smaller EGUs and non-EGUs voluntarily opting into the trading program were not factors considered in any of these determinations.

Instead, after deciding which sources contribute significantly and after deciding to implement a cap-a-trade program as the remedy, EPA separately considered whether to allow small EGUs and non-EGUs to voluntarily opt in to the trading program to the extent that such sources determine that, on an individual basis, it is cost-effective for them to do so. EPA decided to include these opt-in provisions in the trading program for several reasons. First, EPA expects no net environmental detriment from allowing such sources to opt-in, provided that the opt-in requirements are met. The opt-in requirements ensure that the emissions from opt-in units are adequately monitored and that an opt-in unit can generate and sell allowances to larger, named sources only to the extent the unit reduces its emissions from its permitted or historical emission levels, whichever is lower.   Thus, the opt-in unit will generate allowances only if it reduces its emissions below what would otherwise be its legal limit and below what has historically been (and otherwise would be expected in future to be) its actual levels. EPA notes that today's rule limits the ability of an opt-in unit to simply reduce its heat input and thereby reduce its emissions and generate allowances for sale. An opt-in unit's allowance allocation is calculated by multiplying the less of the unit's historical emission rate or permitted emission rate; and the lesser of the unit's historical heat input or heat input for the prior control period.   Second, given that there is no environmental detriment, the opt-in provision offers a potential means of further reducing the cost to named sources of achieving the necessary reductions. Third, EPA expects subscription into the opt-in program and the amount of opt-in allowances generated and sold to be limited and therefore the impact of such opt-in allowances on emissions from named sources to be limited. EPA plans to audit the cap-and-trade program and can reevaluate the appropriateness of the opt-in program should its effects differ from those that EPA anticipates.

SUMMARY: One commenter noted that it should be possible to add mobile and area sources to the trading program through provisions for credit-based programs. Another commenter argued that opt-ins should include sources that do not emit to a stack or cannot monitor emissions using part 75 protocols. However, another commenter expressed opposition to including mobile sources unless a firm cap is established for this sector.

Some commenters incorporated by reference their comments submitted in response to the NOx SIP call on this issue, which generally expressed support for expanding the scope of the trading program to include mobile and area sources. However, these commenters also acknowledged the difficulties associated with including mobile and area sources and noted that EPA should first investigate the feasibility of including these sources and ensure that adequate protocols and guidance materials have been developed.

LETTERS: Indiana Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), New Hampshire Department of Environmental Services (III-D-42), (IV-D-36), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Virginia Power (III-D-63), (IV-D-80), WPC (III-D-35)

RESPONSE: EPA disagrees with allowing mobile and area sources to opt in at this time. See section III.B.1.d. of the final section 126 rule preamble, and see also the preamble to the NOx SIP call final rule (63 FR 57464) and section IX.B.2.c. of the NOx SIP call RTC (p. 285-286).

II.C.3: Exemptions

SUMMARY: One commenter expressed support for the retired unit exemption. However, another commenter noted that the retired unit exemption should be eliminated. One commenter incorporated by reference their comments submitted in response to the NOx SIP call on this issue, and expressed support for the retired unit exemption.

LETTERS: Associated Electric Cooperative (III-D-41), FirstEnergy (III-D-19), (IV-D-38), Kansas City Power & Light Company (III-D-33), (IV-D-33), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), Utilicorp United (III-D-24)

RESPONSE: The final rule includes an exemption for retired units. The retired unit exemption is designed to reduce requirements for units that are initially subject to the NOx Budget Trading Program and that later permanently retire. The exemption frees a retired unit from unnecessary requirements of the program (e.g., emissions monitoring and reporting). This is further explained in the preamble to the NOx SIP call SNPR (63 FR 25926). Units that receive the retired unit exemption and later recommence operations are subject to the full requirements of the NOx Budget Trading Program. Because allowance allocations will be updated based on recent unit output, retired units will not receive an allowance allocation in perpetuity. See also NOx SIP call RTC, Section IX.B.2.g. (p. 287-288).

SUMMARY: Commenters support the exemption for low-emitting units. One commenter supported the 25-ton exemption on a limited basis, and only if the cost of implementation of the program and regulation on the unit clearly outweighs the benefit of imposing the regulation upon it. Another commenter supported the 25-ton exemption provided that the State trading program budgets are reduced by the full amount in an enforceable permit and provided that there must be adequate safeguards in place to ensure that permit limitations for exempted sources can be enforced.

LETTERS: CAWV (III-D-61), Duke Energy (IV-D-85), MD DNR (IV-D-23), NH DES (III-D-42, IV-D-36), NC DENR (III-D-30), NY DEC (III-D-49), NESCAUM (III-D-26)

RESPONSE: EPA is exempting electric generating units with very low, federally enforceable permit limitation (i.e., 25 tons per ozone season) from the trading program. See final section 126 rule preamble (section III.B.1.c.) for rationale. The final rule ensures that emissions from these units are accounted for.

SUMMARY: Commenter supported 25-ton exemption. Rather than providing an across-the-board exemption based upon the size of a business, the commenter argued that EPA should consider what types of financial aid it could offer to such sources, i.e., guaranteed small business loans, grants, tax credits, or other similar benefits.

LETTERS: IL EPA (III-D-09)

RESPONSE: EPA is providing a 25-ton exemption for electric generating units. See section 126 final rule preamble (section III.B.1.c.) for rationale. EPA is unable to provide the suggested of financial aid to small businesses. Furthermore, EPA maintains that its 25-ton alternative is easier to administer and is more directly related to the trading program because it is tied to a specific amount of emissions.

SUMMARY: Commenter does not support exempting low-emitting units from the trading program because in the aggregate such units contribute to non-attainment in other areas, and should be part of the remedy. In addition, because the section 126remedy involves only the trading program, these sources would not be accounted for, unlike under the NOx SIP call where sources exempted from the trading program are accounted for in the other sector budgets when a State demonstrates that it will meet its statewide budget. Further, the basic concept behind any trading program (i.e., that controls will be implemented where it is most economical) belies the need for these exemptions. If it is too inefficient or expensive to control a particular EGU, other units can control further to free up allowances for that unit.

LETTERS: MA DEP (IV-D-8)

RESPONSE: EPA is providing a 25-ton exemption for electric generating units. EPA notes that exempt units will not have a significant adverse impact on regional air quality because NOx allowances will be removed from State trading program budgets (either directly or through deductions from allowance accounts or the new unit set-aside) in an amount equal to the full amount of NOx emissions allowed in such units' federally enforceable permits. The exempt units are therefore part of the section 126 remedy. See section 126 final rule preamble (section III.B.1.c.) for rationale. In addition, a 25-ton exemption reduces the economic impact to small entity-owned units since many potentially exempt units are owned by small entities.

SUMMARY: Commenter supports low-emitting exemption and urges the Agency to exempt the remaining small entities. Commenter supports exempting small entities located outside of serious and severe non-attainment areas. The commenter argued that the majority of small entities are non-major NOx emitters and their transport impacts are minimal because almost all of the potentially affected small entities are low sources with short stacks and plume heights.

LETTERS: WV Chamber of Commerce (III-D-50, IV-D-92)

RESPONSE: EPA maintains that an across-the-board exemption, regardless of the units' emissions, could not be supported. See section 126 final rule preamble (section III.B.1.c.) for rationale. EPA notes that some small entities own or operate relatively large electric generating units that contribute significantly to non-attainment in other States. There is no basis for treating these large units differently than other large units. he cost and administrative burdens of the trading program will not affect a significant number of small entities or disproportionately affect small entities.

SUMMARY: Commenter supports a phase in approach for the smaller units similar to that imposed under Title IV of CAA. Reasons to consider phase-in approach: (1) alleviate the backlog in availability for engineering services, equipment, and contractors to make the necessary modifications and help alleviate the projected electrical shortages. (2) Phasing in the program will also realize the bulk of the environmental benefit early, but will recognize and allow for efficiencies that may result from "lessons learned" during the installations of larger units. These "lessons learned" may result in a lower cost for the smaller units than is presently projected.

LETTERS: Hamilton (OH) (III-D-65, IV-D-74)

RESPONSE: EPA has concluded that a phases-in approach for the section 126 rule is not needed. See April 1999 section 126 RTC document, section VI.A., p 123). In addition, a phased-in approach for small entities is not needed because the cost and administrative burdens will not affect a significant number of small businesses nor will it disproportionately impact these small businesses. See section 126 final rule preamble, section III.B.1.c. and section IV.B. and final rule RIA.

II.D.1: Monitoring Issues for Trading Sources

SUMMARY: A number of commenters expressed support for the proposed monitoring requirements. A few commenters agreed that Part 75, Subpart H should be used as the basis for monitoring requirements for sources participating in the trading program. Other commenters agreed that the ability to accurately and consistently account for all emissions should be included as one of the criteria for including sources in the trading program.

However, other commenters raised specific concerns regarding the monitoring requirements as proposed. These concerns were raised in the context of evaluating the potential burden of imposing CEMS requirements on smaller units and considering alternatives to CEMS for certain sources. One commenter noted that Part 75 requirements should not be applied to small EGUs such as pre-1990 peaking combustion turbines and units under 25 MWe, since this approach would not be cost-effective and would discourage small sources from participating in the trading program. However, this commenter added that the recent revisions to Part 75 in Subpart H appear to address this concern. Some commenters noted that units that currently do not use CEMS and which will be potentially subject to the trading program should have the option to demonstrate compliance with emission limitations by using non-CEMS methodologies, such as Title V monitoring, emission factors, or fuel use data. Another commenter asserted that States should have the option of allowing PEMS in appropriate circumstances.

Some commenters incorporated by reference their comments on this issue as submitted in response to the NO_x SIP call. Those incorporated comments generally asserted that monitoring requirements should be tailored to the nature of the source category and that CEMS should not be required as a precondition for participation because CEMS are impractical and too expensive for non-utility sources or smaller sources. One commenter suggested that they should not have to replace CEMS they have for other regulatory purposes with "Part 75 CEMS."

Other commenters asserted that EPA should allow alternative methods of calculating emissions for small or non-utility sources, including emission factors used in combination with fuel or operating data. One commenter asserted that EPA's proposed program should contain monitoring provisions that are consistent with the Title V program. Some commenters asserted that EPA should allow the use of alternative monitoring methods as outlined in the OTC NO_x Budget Model Rule and noted that EPA should use the default emission factors developed by OTC for certain types of sources and should review the alternative monitoring protocols developed in the OTR program for use in this program. One of these commenters also asserted that RECLAIM provides a precedent for developing monitoring protocols that can be applied to smaller sources and should be used to identify reliable and less costly alternatives to CEMS.

LETTERS: American Forest & Paper Association (II-D-37), and (A-96-56, V-H-93 as incorporated by reference in IV-D-21), Associated Electric Cooperative (III-D-41), Champion International Corporation (A-96-56, V-H-126 as incorporated by reference in IV-D-45), DuPont (A-96-56, V-H-176 as incorporated by reference in IV-D-73), Illinois EPA (II-D-19), (III-D-9), (IV-D-5), Kansas City Power & Light Company (III-D-33), (IV-D-33), MidAmerican Energy Company (II-D-12), Ohio EPA (V-H-124), Orrville, Ohio, City of (A-96-56,V-H-52 as incorporated by reference in IV-D-85), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D- 49), Pennsylvania Dept. of Environmental Protection (II-D-26), Utilicorp United (III-D-24), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), Virginia Power (III-D-63), (IV-D-80), West Virginia Manufacturers Association, et. al. (A-96-56, V-H-102 as incorporated by reference in IV-D-60)

RESPONSE: See section III.B.6 of the preamble, Emissions Monitoring and Reporting, and the NO_x SIP call RTC, Use of Part 75 Monitoring, Cost Concerns, Section IX.C.1. (p. 289 - 291). The cited discussions as well as the discussions of monitoring in Sections II.D.1. and II.D.2. of this RTC explain why EPA believes its decisions in this final rule regarding NOx emissions monitoring are appropriate for sources that participate in the Federal NOx Budget Trading Program.

EPA agrees with commenters who indicated that requiring sources to monitor and report emissions to demonstrate compliance with the requirements of the trading program using the provisions set forth in subpart H of 40 CFR part 75 is appropriate.

Some commenters suggested that non-utility sources should not be required to meet the monitoring requirements of 40 CFR part 75 because the size of their boilers is trivial compared to those of most utilities. In the OTAG process, units larger than 250 mmBtu/hour were characterized as large. EPA believes that it is reasonable to treat all units above this threshold in a similar manner regardless of ownership. Therefore as further explained in section VII.D.3. of the NOx SIP call preamble, EPA believes that CEMS are appropriate for all large units, regardless of whether they are utility owned or not. In addition, the reduced monitoring provisions of § 75.19 and Appendix E of part 75 and fuel use monitoring provisions under Appendix D of part 75 could apply to gas-fired and oil-fired non-utility units, as long as they qualify, regardless of unit ownership.

Many of the commenters who expressed concern about the use of CEMS specifically stated their concerns about requiring CEMS on relatively small or infrequently operated units. As discussed in section III.B.6 of the preamble, EPA believes that this concern is addressed through two provisions in part 75 that allow reduced monitoring for these types of sources.

Another commenter expressed concern that they would have to replace their existing "Part 60 CEMS" with new "Part 75 CEMS". EPA would like to clarify that there is no such thing as a "Part 60 CEMS" or a "Part 75 CEMS." Both Part 60 and Part 75 contain performance specifications that must be met by the CEM. Since Part 75 was promulgated more recently and more accurately reflects current monitoring technology, the performance specifications in Part 75 are more stringent than those in Part 60. The performance of monitors under the Title IV program demonstrates that most monitors are quite capable of meeting these more stringent quality assurance requirements. It should be noted that many sources subject to Part 60 monitoring requirements are meeting emission rate limits (in lbs/mmBtu), not mass limits (in lbs). These sources would have to install additional monitors to be able to quantify their emissions. Sources would also have to replace their reporting hardware and software to meet the requirements of Part 75.

As explained in section VII.D.3. of the final NOx SIP call preamble and in responses in section C.3. of the NOx SIP call Response to Comment document, EPA does not believe that the options that commenters suggested as alternatives to CEMS adequately quantify NOx mass emissions. For example, the Wisconsin Paper Council noted on page 5-6 of their comments (A-96-56, V-H-163) that "Compliance determination requirements should be appropriate for the type of controls imposed. The proposed CEMS requirement presumes that States will impose rate or mass based limits on large industrial sources...States could easily choose to impose technology based controls, such as the use of low NOx burners for which a CEMS would not be necessary." This commenter did not provide any alternative method for determining compliance with the mass based trading program. Some of the commenters who were concerned about the use of CEMS suggested no alternative means of determining compliance with a NOx mass emissions limit. Others suggested that requirements should be "tailored to the nature of the source and minimized wherever possible." While the commenter made no more detailed suggestions about how this should be accomplished, EPA believes that the monitoring provisions in part 75 are tailored to different types of sources. As is further explained in section III.B.6. of the preamble and Appendix A section 1.b. of the NOx SIP call RTC document, part 75 offers various monitoring options based on whether the unit burns oil, gas or another fuel and whether the unit is small or infrequently operated. Other commenters suggested the use of periodic monitoring under Title V, the use of stack test data and emission factors combined with sources' actual firing rates, and the use of "predictive emissions monitoring systems" for natural gas IC engines. Section VII.D.3. of the final NOx SIP call preamble and issue C.3. of the NOx SIP call RTC document in further detail why EPA does not believe the alternatives proposed by commenters are adequate for ensuring compliance with the trading program. EPA notes that some of the provisions of §75.19 for low mass emission units are similar to commenters' suggestions for use of emission factors combined with actual firing rate. The Agency notes that IC engines are not part of the Federal NOx Budget Trading Program and are not affected sources under the section 126 rulemaking.

SUMMARY: One commenter noted that additional monitors should not be required for units that share a common stack and do not currently measure emission rates at the unit level because, in many cases, there are no acceptable locations to monitor flow in the duct work for these units. This commenter added that EPA provides no explanation for the assertion that apportioning heat input at the unit level is not accurate enough to determine NOx mass.

LETTERS: Virginia Power (III-D-63), (IV-D-80) (A-96-56, IV-G-3)

RESPONSE: See Sections IX.C.2.b and IX.C.9.h. of the NOx SIP Call RTC document.

In the final NOx SIP Call, EPA revised the final provisions of §75.72(a)(1)(i). Heat input may be monitored at a common stack and then apportioned to individual units based on load in situations where NOx is monitored on the corresponding common stack and where all units sharing the common stack are affected units. In this case, as suggested by one commenter on the NOx SIP Call, the total NOx mass emission would not be underestimated because the same NOx emission rate applies to all units sharing the same equipment for monitoring heat input and all the units are subject to the NOx mass emissions reduction program. The commenter's concern about requiring units to install individual unit flow monitors is addressed for the vast majority of cases by allowing common stack monitoring of flow where all units sharing the common stack are affected. These same provisions will apply for the Federal NOx Budget Trading Program.

The Agency also disagrees that in many cases, there are no acceptable locations to monitor flow in the duct work for these units. EPA disagrees that this is likely. Utilities also claimed that it would be difficult to install flow monitors or CEMS during the original part 75 rulemaking for the Acid Rain Program (see Docket A-90-39, Meeting minutes for CEM Subcommittee of Acid Rain Advisory Committee). However, most utility units affected under the Acid Rain Program have, in fact, been able to install and certify the necessary CEMS and flow monitors without needing alternatives to flow monitors for particular applications. The commenter has provided no information to support the assertion that no good location for measuring flow exists for many applications.

The Agency disagrees that it has provided no explanation for the assertion that apportioning heat input at the unit level is not accurate enough to determine NOx mass, for the case where affected and non-affected units share a common stack. Underestimation of NOx mass emissions would be a concern for the Agency if heat input were apportioned based on load and then each heat input number were multiplied by a different NOx emission rate from a different NOx-diluent CEMS (or a single NOx emission rate from a common stack CEMS). This is because multiple factors affect the relationship between heat input and load (e.g., unit efficiency, boiler or turbine type, fuel used), that may make the assumption of a linear relationship between load and heat input an incorrect one.

In the final §§75.72(e) and 75.72(a)(1)(i), EPA has clarified that heat input must be apportioned to each unit for those cases where the State or federal NOx mass reduction program requires determination of a unit's heat input for allocating allowances. It would not be necessary to apportion NOx mass emissions to individual units. This is similar to the Acid Rain Program, where a designated representative assigns a proportion of emissions to be counted against allowances for the units sharing the common stack, but SO_2 mass emissions are not required to be reported for each unit.

SUMMARY: Some commenters incorporated by reference their comments submitted in response to the NOx SIP call which noted that the installation and use of CEMS may not be necessary, practical, or technologically feasible in some cases. Some also noted that CEMS do not always give valid measurements and that other methods should be considered. Commenters noted that EPA should investigate the feasibility of applying CEMS to sources other than utilities and if necessary, allow some flexibility regarding the monitoring systems that would be required for smaller sources. Finally, one commenter noted that EPA should clarify the procedures in § 96.71(a) regarding certification under Part 75 and another asserted that not all of the data elements required by Part 75 are necessary for determining compliance.

LETTERS: American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: Many of the commenters who expressed concern about CEMS not always giving valid measurements cited the amount of missing data that has occurred in the RECLAIM program. As explained on page 5-9 of the RECLAIM Audit (South Coast Air Quality Management District, "RECLAIM Program Three Year Audit and Progress Report," May 8, 1998), most of the missing data that occurred early in the RECLAIM program was a result of two factors. The first is that sources had difficulty installing and certifying monitors in time to meet the compliance deadlines. The second is that RECLAIM sources had problems dealing with the electronic reporting requirements.

The deadline for certifying and installing monitors in §97.70(b) is May 1, 2002 for most sources (sources that are requesting early reduction credits must have monitors installed by May 1, 2000). EPA believes that this provides enough time for sources to install the necessary monitoring equipment, especially in light of the fact that many of the sources potentially affected by the program already have the necessary monitors installed to meet other regulatory requirements, such as the requirements of Title IV of the Clean Air Act and the requirements of the OTC NOx Budget Program. EPA also believes that the problems related to new software will be minimized because the part 75 reporting format already exists and is being used today. While there will be some changes in that reporting format as a result of the need to report NOx mass emissions and because of revisions to part 75, EPA thinks that these revisions will not cause problems by the 2002 deadline because the revisions will be required much earlier for many units for other purposes. Units in the OTC have already begun collected NOx mass data in the required format and EPA anticipates that title IV affected units will begin to use the other revisions to the electronic reporting format in 2000. Evidence from Title IV also indicates that the ability of CEMS to provide accurate and complete data is excellent. In 1997, over 97% of the installed CEMS met the required standards for periodic accuracy testing and valid CEMS measurements were reported for over 98% of the operating hours (p. 21, EPA, 1997 Compliance Report, Acid Rain Program, August 1998).

As explained in the response to issue C.2.b in the NOx SIP call RTC, all of the sources affected by the title IV program have been able to install the necessary monitors. Since the affected sources under the trading program are the same or similar types of sources as to title IV sources, EPA does not believe that these sources should have problems installing CEMS. Opt-in units will be the same types of units as the other NOx Budget units but will below the size cutoffs to mandatory participation in the NOx Budget Trading Program. Again, these sources should not have difficulty installing CEMS.

One commenter noted that not all of the data elements required by Part 75 are necessary for determining compliance with a NOx mass emissions program. While the commenter did not provide specific examples, EPA assumes that the commenter is referring to reporting provisions that support non-NOx related provisions of title IV. For example, Part 75 requires the reporting of SO_2 concentration from coal fired units to determine SO_2 mass emissions. EPA agrees with the commenter that sources that are not subject to Title IV should not be required to report extraneous data needed for title IV compliance that is not needed for compliance with a NOx mass reduction program. Subpart H of part 75 explicitly provides that units not subject to the Acid Rain Program are not required to monitor and report SO_2 emissions.

SUMMARY: The commenter stated that the missing data provisions for new units is inconsistent with similar provisions under the Acid Rain Program. Under the Acid Rain Program, new units do not begin reporting emissions or holding allowances until the monitoring system is certified or the deadline for certification testing has passed. The commenter requested that the provisions in § 96.70(a)(2)(ii) for new units should be revised to be consistent with Part 72.

LETTERS: Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: The EPA agrees that these two provisions are different; however, the Agency disagrees with the suggestion that they should be the same.

First, EPA is requiring compliance with the NOx Budget Trading Program to begin at the time that a new unit first emits to its stack because this allows for possible future integration between the NOx Budget Trading Program and the New Source Review Program. Since the New Source Review Program requires compliance starting with the time that a new unit first emits to its stack, part 97 parallels this provision. The EPA will address the integration of the NOx Budget Trading Program and New Source Review in a future rulemaking.

Second, EPA believes that differences between the NOx Budget Trading Program and Title IV of the Clean Air Act warrant this difference in the treatment of new units. Under a cap-and-trade program, it seems generally preferable, from the standpoint of maintenance of the emissions cap, to account for all emissions from each affected unit. This includes, for example, all emissions starting from the commencement of operation of a new unit. Since accounted-for emissions must be offset by allowances, this approach has the benefit of reducing the possibility of emissions in excess of the cap. In addition, since every unit is subject to the requirement to offset its accounted-for emissions with allowances, it also seems generally equitable to account for all of each unit's emissions. This is particularly true if the unit is allocated allowances under a cap, thus reducing the allocated allowances available to other units under the cap. However, there can be other, offsetting considerations in determining whether to take the approach of accounting for all emissions from the commencement of operation of a new unit.

In particular, EPA decided in the Acid Rain Program not to account for a new unit's emissions or to require the holding of allowances to cover new-unit emissions until the earlier of the deadline for monitor certification, which is 90 days after the commencement of commercial operation of the new unit, or the completion of certification testing. The Acid Rain Program, of course, applies to annual SO_2 emissions. If a new unit were required to account for emissions starting from the unit's commencement of operation and prior to completion of certification of its monitors, then missing data (e.g., based on maximum potential concentrations, flow rates, or emission rates, or on using a reference method) would have to be used to account for the emissions until monitor certification. Since monitor certification testing requires some operating time, every new unit would likely have some period where missing data would have to be used and allowances would have to be used to offset emissions accounted for by missing data. Generally, new units are not allocated allowances under the Acid Rain Program. It was in this context that EPA decided to start accounting for new-unit emissions as of the deadline for monitor certification. See Response to Public Comment on the Core Rules of the Acid Rain Program at M-293 through M-296 (October 1992). Furthermore, many of the new units being built are gas-fired units with insignificant SO_2 mass emissions, but significant NOx mass emissions. Therefore, it is even more important that new units in the NOx Budget Trading Program measure their NOx emissions from the commencement of operation, compared to new units in the Acid Rain Program.

In contrast, the NOx Budget Trading Program applies only to ozone season emissions. This means that a new unit is likely to have the ability to plan to complete monitor certification testing before the period during which emissions must be offset by allowances and thereby avoid the need to use allowances to offset emissions accounted for by missing data. In addition, under Part

97 EPA will allocate allowances to new units. In light of these differences between new units under the Federal NOx Budget Trading Program and new units under the Acid Rain Program, EPA is taking the approach in Part 97 of requiring new units to account for emissions starting with the commencement of operation.

Under § 75.70(g), a new unit must account for NOx and heat input either using maximum potential concentrations, flow rates, or emission rates, or using a reference method. The Agency believes that this is the most appropriate approach to providing data from a new unit before its monitors are certified. Section 75.70(g) is similar to § 75.4(d) of the Acid Rain regulations, which requires an existing unit in the Acid Rain Program that is shutdown as of the initial monitor certification deadline to account for emissions using either maximum potential concentrations or emission rates, reference methods, or another procedure approved by the Administrator through a petition. This is required even though existing units shutdown for an extended period may have to conduct "testing of [unit] equipment" and certification testing of monitoring systems, similar to the testing a new unit must go through after commencing operation.

SUMMARY: One commenter noted that if a source chose to have a different certifying official under the NOx Trading Program (authorized account representative) and the Acid Rain Program (designated representative) EPA should not require that both officials should sign submissions that relate to both programs.

LETTERS: Utility Air Regulatory Group (A-96-56, V-H-85, as incorporated by reference in IV-D-70)

RESPONSE: EPA disagrees with the suggestion that it is not necessary to have both officials certify submissions. The reason to have a certifying official is to ensure that there is one official responsible for ensuring compliance for the Federal NOx Budget Trading Program. If that certifying official is not required to certify a submission related to the Federal NOx Budget Trading Program because it has been certified by another official under a different program, there will no longer be one responsible official. In addition, if a source finds this requirement burdensome, they are free to designate the same official as the certifying official for both programs. EPA has modified the relevant regulatory language so that the dual certification requirement applies only where the submission includes information related to the Federal NOx Budget Trading Program.

II.D.2: Special Issues for Opt-in Source Monitoring

SUMMARY: A few commenters noted that small sources that opt-in to the trading program should be able to use non-CEMS options for monitoring purposes. Some of these commenters noted that to ensure equivalent reductions at these sources, EPA could use a trade ratio to compensate for the uncertainty in reductions on either a categorical or source-specific basis. Others generally noted that sources should be allowed to use PEMS to opt-in to an emissions trading program. One commenter incorporated by reference their comments submitted in response to the NOx SIP call which asserted that a requirement to install and operate CEMS will discourage opt-in sources from participating in the trading program.

LETTERS: American Electric Power (II-D-24), American Municipal Power-Ohio, Inc. (A-96-56, V-H-29 as incorporated by reference in IV-D-17), Coastal Corporation (IV-D-16), INGAA (III-D-53), INGAA (IV-D-41), West Virginia Chamber of Commerce (III-D-50), West Virginia Chamber of Commerce (IV-D-92)

RESPONSE: See section IV.B.1.d. of the preamble, Opt-in Units, and the NOx SIP call RTC, Special Issues for Opt-In Sources Monitoring, Section IX.C.5. (p. 298):

EPA does not agree that there should be special, less expensive monitoring methods for opt-in units than for equivalent mandatory NOx Budget units in order to encourage more units to opt in. See Section IV.B.1.d. of the preamble.

However, EPA agrees that it is appropriate to have monitoring methods other than CEMS for smaller and less frequently operated units. In the final NOx SIP call, EPA has included revised provisions to part 75 that allow greater flexibility in monitoring for units with low emissions. In addition to existing provisions of heat input monitoring using fuel flow meters (App. D) and correlations of NOx emissions from stack testing and heat input (App. E), EPA has added provisions for low mass emitters (§75.19). Qualifying gas and oil-fired opt-in units will be able to use these less expensive monitoring methods. See sections IV.B.1.d. and IV.B.6. of the preamble, section VII.D.3. and appendix A of the NOx SIP call preamble and sections C.7. and C.3.d. of the NOx SIP call Response to Comments Document.

Part 75 does allow for the use of alternative monitoring systems, provided that they meet the requirements of subpart E of part 75. Therefore, a source could use a predictive emission monitoring system (PEMS) if the NOx Authorized Account Representative petitions to use the PEMS and EPA approves the PEMS as meeting the requirements of subpart E of part 75. The EPA is currently working together with sources on a long-term project to examine the performance of PEMS compared to CEMS. PEMS is not yet a monitoring method that is generally applicable.

EPA disagrees that it is appropriate to allow less accurate, less expensive monitoring approaches and then calculate a trade ratio that could be multiplied by estimated emissions in order to compensate for uncertainty in reductions. The commenter has not explained how this approach could be practically implemented. The uncertainty in monitoring will vary by the monitoring approach, by the source category, and by the individual unit. Based on EPA's experience with proposing exceptions to CEMS in part 75 and experiences with opt-in sources, opt-in applications would require an extremely resource-intensive case-by-case review if EPA allows such an approach. The Agency does not agree that allowing sources to opt-in would result in greater emission reductions. The opt-in provisions allow small electric generating or steam producing units to make lower cost reductions and sell allowances to other NOx Budget units that may use these allowances instead of making reductions. Opt-ins therefore can reduce the overall cost of compliance but do not increase the total amount of emission reductions. There would be little benefit to bending monitoring rules further to allow in small sources that make minor emission reductions worth less than the cost of the monitoring methods already allowed by part 75. Furthermore, retreating from uniform monitoring requirements could undermine the value of allowances. EPA agrees with another commenter (Maine DEP, II-D-40), who stated that “the use of ‘exchange ratios’ would introduce unnecessary complications to a cap and trade program, reducing or even eliminating many of the cost-savings and efficiencies.” This same commenter supported “the development of uniform emission monitoring and reporting criteria.”

SUMMARY: One commenter noted that it is appropriate to allow sources under EPA's CAM program to participate since they are required under CAM to develop and implement protocols that allow the evaluation and certification of continuous compliance, and that including these sources would allow for a much broader trading base.

LETTERS: American Electric Power (II-D-24)

RESPONSE: See section IV.B.6. of the preamble and the NOx SIP call RTC, Section IX.C.3.d. (p. 297):

EPA does not believe that the types of protocols set forth in the Compliance Assurance Monitoring (CAM) rule, part 64, are appropriate for a trading program because they were not designed to quantify mass emissions. Furthermore, EPA does not believe that the CAM regulation provides accurate enough monitoring for sources with large NOx mass emissions. The inaccuracy stems from the fact that, while site specific source testing are based on testing during very limited periods of time, actual NOx emission rates, and thus NOx mass emissions, can vary widely over time at a given unit. As part of the Phase II NOx rulemaking under Title IV, EPA reviewed CEMS data for 30 day periods for a number of boilers. This data showed wide fluctuations in NOx emission rates. See Appendix D-1 of "Assessment of Performance Capabilities of LNBs Based on Reported Hourly CEM Data through The Second Quarter of 1996." EPA does not believe that it would be appropriate to allow sources under the CAM program to participate in the trading program unless those sources meet the monitoring requirements of Part 97. For this and several other reasons, EPA concluded in the preamble to the CAM regulations that CAM monitoring was not appropriate for use in an emissions trading program (62 FR 54915, 54916, and 54922).

II.D.3: General Monitoring Issues

SUMMARY: A few commenters expressed support for streamlining the trading program, particularly with respect to monitoring and data collection. Some commenters noted that as the trading program is developed, EPA should minimize the data collection and recordkeeping requirements for States and regulated sources. One commenter noted that given the potential for as many as four possible control mechanisms (i.e., section 126 petitions, NOx SIP call, FIP, and OTC NOx MOU), uniform monitoring and recordkeeping requirements are vital to the development of a true market-based system.

LETTERS: Maine Dept. of Environmental Protection (II-D-40), Midwest Ozone Group (II-D-9), Virginia Power (II-D-6)

RESPONSE: EPA agrees and has attempted to provide for integrated reporting and recordkeeping formats to support these various programs. (See, e.g., EDR version 2.1 and accompanying instructions). For the Federal NOx Budget Trading Program, EPA will act as a central administrator of the program, and separate reporting to States will not be required.

SUMMARY: One commenter noted that the proposed rule should be revised to include the most current ASTM standards: D5373-93 is now D5373-93(1997), D2015-85 is now D2015-96, D240-87 is now D240-92(1997), D1826-88 is now D1826-94, D1945-81 is now D1945-96, and D3588-89 is now D3588-98.

LETTERS: ASTM (III-D-81)

RESPONSE: Although EPA is committed to encouraging the use of consensus-based methods, consistent with Section 12(d) of the National Technology Transfer and Advancement Act of 1995, EPA is not revising part 75 to include the suggested standards at this time. Only after a full evaluation of new ASTM standards can EPA act to revise its rules to allow the use of updated ASTM procedures. EPA will consider these suggestions as it revises part 75 in a future rulemaking. Because of requirements of the Office of the Federal Register, EPA cannot incorporate ASTM procedures by reference in a manner that allows for the most recent version of a method to be automatically accepted and replace the version cited in the applicable regulations. However, EPA notes that, to the extent a source wants to use a more recent version of the ASTM method, the designated representative may petition the Administrator under §§ 75.66 and 97.75.

SUMMARY: One commenter supports an approach of measuring small unit output separately and deducting it from the electrical output of the plant. Another commenter stated that, if emissions from small units really are insignificant, emissions from small units could be excluded from monitoring requirements without measuring and subtracting their electrical output from the plant-level output.

LETTERS: FirstEnergy Companies (A-96-56, V-H-86 as incorporated by reference in IV-D-38), New Hampshire Dept. of Environmental Services, Air Resources Division (A-96-56, V-H-72 as incorporated by reference in IV-D-38)

RESPONSE: These comments apply to monitoring of electrical output under an output-based allocation. As discussed in the preamble, EPA is not including an output-based allocation approach in the final rule at this time. Therefore, the Agency is not addressing comments on this issue in today's rule and is not incorporating provisions for dealing with small unit output in the final rule. However, the Agency may need to address this issue in the future when the Agency proposes a rulemaking incorporating output-based NOx allowance allocations.

SUMMARY: Commenter states that it is possible to measure output from units that produce steam for electricity and non-generation uses by calculating an electrical equivalent for steam produced by boilers.

LETTERS: FirstEnergy Companies (A-96-56, V-H-86 as incorporated by reference in IV-D-38)

RESPONSE: The comment applies to monitoring of electrical output under an output-based allocation. Because EPA is not adopting a specific output-based allocation approach in today's rule, the Agency is not addressing comments on this issue in today's rule. However, the Agency may need to address this issue in the future when the Agency proposes a rulemaking incorporating output-based NOx allowance allocations.

SUMMARY: Commenter states that it may not be necessary to directly link all product output to emissions output. Provided that small, infrequently used units emissions are, indeed, insignificant, then emissions from those units could be excluded from monitoring requirements without measuring and subtracting their electrical output from the plant-level electrical output.

LETTERS: New Hampshire Dept. of Environmental Services, Air Resources Division (A-96-56, V-H-72 as incorporated by reference in IV-D-36)

RESPONSE: See response to comment above about how to deal with small units when measuring plant-level output.

SUMMARY: Commenter stated that sources should not be required to measure or report output levels unless output is the basis for allocation in a State.

LETTERS: Pennsylvania Power and Light (PP&L) (A-96-56, V-H-119 as incorporated by reference in IV-D-49)

RESPONSE: EPA disagrees with the comment. Under the missing data procedures of part 75, utilities use output data, either in the form of electrical output in gross MW or of steam output in lb/hr. In addition, part 75 allows affected units sharing a common stack to apportion heat input to individual units from monitors on the common stack using either electrical output or steam output. Thus, output data is used for compliance purposes under part 75, even if it is not used for allocation purposes. Utilities specifically requested that output be used for the purposes of missing data substitution and heat input apportionment. The Agency would not be able to implement the existing provisions of part 75 if units did not report their output data.

SUMMARY: These commenters asserted that EPA should include all monitoring requirements that apply to the trading program in the Part 96 model rule instead of incorporating Part 75 by reference. One commenter expressed concern that if EPA does not clarify all monitoring requirements, it will be difficult to fully assess the impact of the program on all sources.

LETTERS: Indianapolis Power & Light Company (A-96-56, V-H-40 as incorporated by reference IV-D-15), South Carolina Department of Health and Environmental Control (A-96-56, V-H-190 as incorporated by reference in IV-D-87), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: EPA disagrees that all monitoring requirements that apply to the trading program should be in the rules implementing the NOx Budget Trading Program (either Part 96 or Part 97). The commenters have not made a compelling case explaining why they believe this is an enforcement concern. The potential for one action or inaction violating multiple regulations is hardly unusual. For example, in the Acid Rain Program, since part 72 requires compliance with part 75, a unit could be in violation of both parts. The same thing can occur with regard to multiple regulations in a single part. Because penalties for violations (e.g., monitoring violations) are discretionary and subject to review, any issues concerning violations of multiple regulations arising from a single action or inaction can reasonably be addressed on a case-by-case basis. In addition, many of the existing part 75 provisions are appropriate for monitoring NOx mass emissions. By integrating NOx mass emission monitoring into part 75, EPA avoids reproducing large portions of part 75 and avoids the confusion that could be engendered by requiring sources under both the NOx trading program and the Acid Rain Program to comply with two different sets of monitoring regulations. Furthermore, this reduces redundancy between different but interrelated programs, particularly the NOx Budget Trading Program under the NOx SIP Call and the Federal NOx Budget Trading Program under section 126.. The Agency believes that including appropriate monitoring provisions in part 75 is easier to understand and is more efficient than putting all monitoring provisions for the NOx Budget Trading Program in part 96 or part 97.

II.E.1: Input vs. Output Allocation Methods (EGUs)

SUMMARY: A number of commenters expressed support for an input-based allocation methodology. However, a number of other commenters expressed support for an output-based allocation methodology. Some of these commenters support output based allocations only for fossil fuels, while others expressed support for an output-based allocation methodology that is generation-neutral.

Some commenters incorporated by reference their comments on this issue as submitted in response to the NOx SIP call. Some of these commenters had expressed support for the heat input-based allocation method. Other commenters expressed support for an output-based allocation method that would only incorporate fossil fuel-fired units. Another commenter noted that EPA's proposal does not allow sufficient time to perform the research needed to develop a position on whether an input or output based allocation method should be used. One commenter asserted that EPA should reject an output-based allocation method. Others noted that there are difficulties and uncertainties associated with an output-based allocation procedure that should be resolved prior to implementation. However, a few of these commenters expressed support for an output-based allocation method that would incorporate non-fossil sources and some added that an output-based, generation-neutral approach would result in greater air quality benefits.

RESPONSE: For the reasons cited in section III.B.3 of the preamble to this section 126 final rule, the Agency has concluded that an output-based approach is the most appropriate approach to use for the updating allocation methodology. However, the Agency finds that a heat input based allocation is the most appropriate approach to use for the initial 2003-2007 allocation.

The Agency analyzed the implications of various allocation methods (docket # A 97-43, category XI-B-01) and found that an updating output-based allocation method result in positive ancillary environmental impacts. The analysis indicated that relative to a heat input-based allocation system, an output-based allocation system leads to an increase in generation from combined cycle plants and decreases in generation from coal-fired plants which can lead to decreases in ancillary emissions such as carbon and mercury. In addition, over the long-term, output data can potentially be more accurate than heat input data (see docket # A-97-43, IV-E-05 (2/3/99 meeting minutes of Updating Output Emission Limitation Workgroup meeting)). For example, the error range for a watt-meter is in the range of 1 to 2% of full scale, and there is only one piece of equipment needed. To measure heat input, a source burning coal must measure stack flow rate (designed to better than 3% of full scale) and % CO2 or %02 (designed to be accurate to at least 0.5% CO2 or O2). In addition, a stack gas measurement includes error from the "F-factor," a constant that accounts for the relationship between combustion gases and the heat input in the fuel combusted. Using fuel measurements for heat input from oil or gas includes both error in fuel flow-meters (designed to better than 2% of full scale) and error in sampling and analysis of fuel. Since the same kind of flow meter equipment can be used for measuring steam output as for fuel flow, we would expect thermal output measurements to be at least as accurate as heat input measurements.

While the Agency has committed to issuing allocations based on output, the Agency agrees with the commenter who asserted that there are uncertainties associated with an output-based allocation procedure that should be resolved prior to implementation. They Agency plans to resolve the details related to implementing an output-based allocation methodology prior to the 2008-2012 reallocation of allowances. The Agency believes that implementation of an output-based allocation system would require some rule changes to the Agency's applicable monitoring and reporting rules. The earliest these rule changes can be completed would be 2001, laying the foundation to start collecting the necessary output data in 2002. Because the Agency is committed to recording the allocations at least three years prior to the relevant control seasons (see preamble section III.B.3.a.i.(1)), and the Agency believes that multiple years of data should be used to determine baselines for allocations issued for several years (see preamble section III.B.3.a.i.(3)), and the Agency has determined that issuing allocations in five-year blocks would be appropriate (see preamble section III.B.3.a.i.(2)), the earliest the Agency can start issuing output-based allocations will be for the control season in 2008.

SUMMARY: Some of the commenters that expressed support for a fossil fuel-based allocation methodology noted that the inclusion of nuclear or hydroelectric sources would be inequitable since these types of sources do not emit NOx. One commenter noted that output based allocations to all generation sources are inappropriate since they lead to an inappropriate redistribution of income from fossil to non-fossil sources. One commenter noted that allocations should be granted to these sources only if doing so would not reduce the State budget for fossil fuel-fired sources. Another commenter specifically expressed support for an output based system that would include fossil fuel units and renewable energy sources. A few commenters only generally expressed support for an output-based system, without stating whether the system should be generation neutral or based on fossil fuel units only.

RESPONSE: As stated in the preamble to this section 126 final rule, section III.B.3.a., the Agency has not yet determined whether it should allocate only to fossil-fuel-fired sources or to all generation sources. Therefore, EPA is not addressing comments on this issue in today's rule. Allocating on a heat input basis to fossil fuel-fired sources for the initial five-year period provides additional time to examine whether to include only fossil fuel-fired sources or non-emitting generation sources in addition in future updated allocations based on output.

SUMMARY: Comments were also received on the potential effectiveness of an output-based system to improve efficiency. One of the commenters that expressed support for an output methodology based on fossil fuels, noted that improvements in the efficiency of the energy system will come from the overall stringency of the emissions cap instead of the allocation methodology. One commenter noted that output-based allocations will provide little incentive for energy efficiency. Another commenter noted that an output-based allocation system has the potential to reward and encourage efficiency, but that it is difficult to evaluate the effectiveness and potential benefits until the details of this allocation system are finalized.

RESPONSE: As stated in the preamble to this section 126 final rule, section III.B.3.a., the Agency agrees that the cap and the resulting ability of sources to sell surplus allowances provides an incentive for efficiency improvements in any given year, regardless of how the allowances are distributed. In general, the emission reductions, improvements in energy efficiency, and any associated ancillary environmental improvements, will primarily come as a result of the cap on NOx emissions. However, the Agency's analysis of the impacts of various allocation methods (docket # A 97-43, category XI-B-01) indicated that there are potential energy efficiency improvements as a result of an updating output-allocation system. The analysis predicted that there would be an increase in combined cycle generation and a decrease in coal-fired generation with a resulting increase in overall generation efficiency in the section 126 region and decreases in ancillary emissions.

LETTERS: ARIPPA (IV-D-88), Allegheny Power (III-D-62), (IV-D-86), and (A-96-56, V-H-140 as incorporated by reference), American Municipal Power-Ohio, Inc. (A-96-56, V-H-29 as incorporated by reference in IV-D-17), Arch Coal (III-D-6), Associated Electric Cooperative (III-D-41), Cinergy (II-D-23), (III-D-18), (IV-D-40), and (VIII-C-32), City Utilities of Springfield (MO) (III-D-20), (IV-D-93), Coalition for Gas-Based Environmental Solutions (III-D-44), (III-F-8), (IV-G-211), Dairyland Power Cooperative (III-D-58), Empire (MO) District Electric Company (III-D-59), (IV-D-79), Environmental Defense Fund (III-D-37), (IV-D-46), FirstEnergy (III-D-19), (III-F-7), (III-G-2), (IV-D-38), (IV-G-3), and (A-96-56, IV-D-201 and V-H-86 as incorporated by reference), Foster Wheeler Environmental Corporation (IV-D-50), Gilberton Power Company (IV-D-66), Hahn, Robert W. (III-D-15), (IV-D-62), Hamilton! (OH) Dept. of Public Utilities (III-D-65), (IV-D-74), and (A-96-56, IV-D-147 and V-H-43 as incorporated by reference), INGAA (III-D-53), (IV-D-41), Indiana Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), Kaarsberg, Tina (III-D-40), (III-D-40), Kansas City Power & Light Company (III-D-33), (IV-D-33), Massachusetts Dept. of Environmental Protection (IV-D-8), Midland Cogeneration Venture Limited Partnership (III-D-56), (IV-D-84), Missouri Dept. of Natural Resources (IV-D-23), National Mining Association (III-F-12), Natural Gas Supply Association (III-D-22), (IV-D-27), and (A-96-56, IV-D-172 and V-H-125 as incorporated by reference), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), and (A-96-56, V-H-72 as incorporated by reference), New York Dept. of Environmental Conservation (III-D-49), North Carolina Dept. of Environment & Natural Resources (III-D-30), Northeast States for Coordinated Air Use Management (III-D-26), Northeast-Midwest Institute (III-F-16), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), Ozone Attainment Coalition (III-D-46), (IV-D-52), PECO Energy (III-D-11), (IV-D-13), PP&L (III-D-89), (IV-D-49), (and A-96-56, V-H-119, as incorporated by reference), Panther Creek (IV-D-26) and (IV-G-41), South Carolina Dept. of Health & Environmental Control (III-D-82), Southern Company Services (III-D-34), (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Trigen Energy Corporation (III-D-80), U.S. Generating Company (IV-D-76), Utilicorp United (III-D-24), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), Wisconsin Dept. of Natural Resources (III-D-43)

SUMMARY: Some commenters raised specific concerns regarding the data and methodology that would be used in the context of output based allocations.

Certain non-utility generators questioned the use and reliability of the OTAG 1995 inventory combined with average heat rates to establish output values over a three year period (1995-1997).

One commenter noted that if EPA chooses an output-based allocation methodology, it should not need to use a surrogate for actual MWe generation data, except perhaps in rare cases. A few other commenters noted that output-based allocations should be based on actual "measured" data and not "computed" data. Some of these commenters provided specific suggestions on data sources that should be used to obtain "measured" output based information.

In the context of utilities, commenters recommended the use of actual net generation statistics from FERC, EIA and State public utility commissions. Some commenters noted that the output values calculated by EPA based on input data are inaccurate, and that the method to use EIA Form 860 heat rate values to calculate or convert heat input to output data does not generate accurate information on output. Some commenters specifically recommended the use of EIA Form 767, and noted that this form tracks heat input and power generation on a monthly basis and would be a more reliable source of output data. One commenter expressed support for the use of data from EIA Form 759 to generate allocation for non-fossil generators under proposed Option 3. One commenter suggested that for purposes of determining electricity generation data, EPA should make full use of the data submitted under Title IV, and that units not covered under Title IV should report information on their fuel usage. Some commenters noted that EPA does not have the necessary data to accurately provide output based allocations to each EGU.

In the context of non-utility electric generators, commenters acknowledged that generating output based allocations for these sources is more difficult than for utility sources. One commenter noted that heat inputs from OTAG's 1995 database and assumed heat rates for only one type of solid fuel boiler cannot be used to establish electric generation for the 1995-1997 three-year period. Another commenter noted that the proposed use of generic heat rate values for the non-utility EGU output-based allocation methodology could be improved by using, for example: IPM heat rate values for non-utility generators (instead of generic values); IPM generation forecast and backcast to 1995; and/or data from States that currently require non-utility generators to provide data on heat-input. One commenter suggested that EPA obtain information from these sources on actual output data from 1995-97 that has been previously reported on EIA Form 860. This commenter also suggested that EIA Form 867 be used to obtain information on output for these sources. Some commenters on the Notice of Data Availability suggested using EIA 867 (860B as of 1998) to obtain electric generation data for non-utility sources instead of calculating these data using heat input and heat rate.

LETTERS: ARIPPA (IV-D-88), City Utilities of Springfield (MO) (III-D-20), (IV-D-93), Coalition for Gas Based Environmental Solutions (III-D-44), Duke Energy (III-D-88), (IV-D-89), FirstEnergy (III-D-19), (IV-D-38), Gilberton Power Company (IV-D-66 and IV-G-26), Natural Gas Supply Association (III-D-22), (IV-D-27), Trigen Energy Corporation (III-D-80), US Generating Company (IV-D-76 and A-46-56-VIII-B-88),Wheelabrator Frackville Energy Co. (IX-D-64), R.J. Reynolds (IX-D-67)

RESPONSE: See the preamble to this section 126 final rule, section III.B.3.a. In general, EPA agrees that it is more appropriate to use measured electric output data where those data are available, rather than using calculated output data based upon heat rate and heat input data. EPA is allocating allowances based on heat input in the final rule. Therefore, the commenter’s specific objections to EPA’s proposed historical output data or specific recommendations on what output data to use are not relevant to the allocation methodology that the Agency has finalized and EPA has not addressed comments on these issues in today’s rule. However, one of the reasons that EPA has decided to allocate based on heat input is because of the concerns commenters raised about the quality of the output data. As some of the commenters suggested, EPA intends to propose a methodology to collect more accurate and reliable data that could be used to allocate based on output in the future.

Before deciding to take this approach, EPA provided opportunity for commenters to address existing output data. In response to comment on the proposed allocation methods for Options 2 and 3, EPA made available for comment electric output data from the Energy Information Administration (EIA) for electric generating units on August 9, 1999 (See 64 FR 43124-43129). However, in cases where there were not publicly-available measured electric generation data, and where commenters did not provide output data, EPA found it necessary to use calculated electric output data based upon heat rate and heat input data.

EPA specifically took comment on electric output data that came from EIA form 759, as suggested by one commenter. The Agency then apportioned these plant-level data to the unit level based upon unit heat input (where available) or nameplate capacity (where no heat input data were available). EPA also stated that commenters could provide data from EIA form 767 if they preferred this approach to apportion electric output data from the plant level to the unit level. EPA found that EIA generation data was more consistently available than the gross electric generation data available under the Acid Rain Program. (Under part 75, utilities may report either electric generation or steam flow as a measure of load.)

For those EGUs that were not utility units, EPA took comment on generation, heat rate and heat input data in the same August 9, 1999 notice. In some cases, the heat input and heat rate data came from public comments. In other cases, the generation came from calculations from the Integrated Planning Model. In its request for comment, the Agency said that it would accept data the source used to report on EIA form 867 for the years 1995 through 1997 or EIA form 860B for the year 1998. EPA also requested that commenters include an explanation and documentation for apportioning the annual generation to the ozone season (May 1 through September 30) if the form requires annual generation data.

SUMMARY: Certain commenters generally noted that the annual data in EIA Form 867 cannot be used to establish heat input during a five-month ozone season for purposes of allocations.

LETTERS: ARIPPA (IV-D-88), Gilberton Power Company (IV-D-66 and IV-G-26)

RESPONSE: EPA did not use the annual data in EIA Form 867 to provide heat input data for comment. For heat input-based allocations, EPA used the data compiled in the inventory for the $_{NOx}$ SIP call, section 126 and FIP actions. For non-utility generators, these heat input values were based on available information sources (but not EIA Form 867 data, which historically have been considered confidential). EPA's initial values for these units were subject to public comment and verification by affected non-utility generators and State agencies.

SUMMARY: A number of commenters noted that the proposed output-based allocation methodology would penalize cogeneration facilities because it distributes the same amount of allocations to these sources as simple electric generators, even though cogenerators must consume more energy in order to provide useful thermal energy. They suggested that EPA should allocate allowances to cogeneration facilities for both thermal and electric output (or, as proposed by one commenter, use an option based on output sold). Commenters provided specific information and recommendations as to how EPA should calculate the thermal output of cogeneration facilities by using generic power-to-heat ratios or obtaining the necessary data directly from facilities.

Some commenters on the Notice of Data Availability (NODA), 64 FR 43124, expressed concern regarding the accuracy of electric generation data for co-generation sources. One commenter noted that EPA has not addressed in the NODA how steam electric units that co-generate steam for other uses will be provided allocations that accurately reflect their operations. This commenter notes that since EPA has simply requested electricity output from all units, there is no obvious attempt to consider the steam output of units and provide the appropriate credit for thermal energy and that these types of units could be penalized under an output based allocation scheme if this issue is not properly addressed. Another commenter expressed support for an input based allocation scheme in part because it is difficult to accurately compare the total output of a plant that generates steam and electricity to one that only generates electricity. One commenter noted that EPA should not develop a direct correlation between electrical generation and emissions budgets for cogeneration facilities since the steam produced may not contribute to electric generation.

LETTERS: Coalition for Gas Based Environmental Solutions (III-D-44), FirstEnergy (III-D-19), (IV-D-38), Gilberton Power Company (IV-D-66 and IV-G-26), INGAA (III-D-53), (IV-D-41), Kaarsberg (III-D-40) (IV-D-99), Midland Cogeneration Venture Limited Partnership (III-D-56), (IV-D-84), Natural Gas Supply Association (III-D-22), (IV-D-27), Northeast-Midwest Institute (III-G-16), Trigen Energy Corporation (III-D-80), Cinergy (IX-D-04 and 105), PG&E Generating (IX-D-68), RJ Reynolds (IX-D-67), Wheelabrator Frackville Energy Co. (IX-D-64)

RESPONSE: See section III.B.3.a.ii. of the preamble to this section 126 final rule. The EPA is not including output-based allocations in today's rule and therefore is not addressing comments on the issue of how to allocate on an output basis to cogeneration facilities. However, the Agency may need to address this issue in the future when the Agency proposes a rulemaking incorporating output-based $_{NOx}$ allowance allocations.

EPA agrees generally that using heat input and a heat rate to estimate output from a cogeneration unit is not as accurate or as equitable as using measured electric and thermal output. The Agency specifically encouraged commenters to provide this information in the proposed rulemaking because these data are not publically available. However, only two plants provided thermal output data. For those units where commenters did not provide output information, EPA would still have needed to use heat input and a heat rate to estimate output.

EPA did not use power-to-heat ratios to estimate thermal output because this requires information on what units are cogeneration units and what is their electrical output. Although EPA has requested that cogeneration units provide electric generation and thermal output data, little information on either the identification of these units or on their outputs was provided.

Another commenter suggested that EPA establish an interim recordkeeping system, to which facilities could provide unit-specific electricity generation and thermal output data. EPA has already specifically requested this information for all cogeneration facilities in the proposed section 126 and FIP rulemakings. The comment public period for these rulemakings was the appropriate time for sources to provide comments. There is no need to have a separate recordkeeping system that would revise allocations after finalizing the section 126 or FIP rulemaking for a State. In fact, this could create additional uncertainty for sources if the NOx allowance allocations can continue to change. The Agency believes it is important for sources to receive their allowance allocations at least three years in advance to give them sufficient time to plan.

The same commenter also suggested that it would provide data on thermal and electric output for its plants, as long as EPA can protect the data as confidential business information. EPA notes that electric generation data is already publically available through EIA for utilities. EIA recently determined that these data will no longer be kept confidential for non-utility generators, beginning in 1998. Therefore, the Agency does not see historic output data as sufficiently commercially sensitive to require protection as confidential business information. In addition, it is inappropriate to require some commenters to make their output information public in order to revise their allocations, while others may keep this information confidential. Furthermore, it will be difficult for output information to remain confidential. This is because anyone who knows the output of any source and the total output for all sources could estimate the percentage that EPA used to adjust all the allocations, and thus, could estimate any individual source's output. Finally, the Agency believes it is in the best interests of the public, including all affected sources, to have a transparent process where the Agency's allowance calculations can be verified. If EPA did not make output information available to the public, interested members of the public (including other sources) would not be able to verify whether the Agency correctly calculated sources' allowance allocations.

SUMMARY: A few commenters noted that the proposed output-based allocation methodology proposes to use average utility heat rate information as compiled in Table 1 (63 FR 56411) to estimate the heat rate of non-utility electricity generators, and that this table contains a heat rate of 10,400 Btu/kWh for coal units under 500 MW. These commenters objected to this approach as applied to circulating fluidized bed (CFB) boilers that may use waste coal as fuel. One commenter noted that CFB boilers vary widely between each other due to the various types of fuel consumed, and that waste coal plants do not have heat rates as low as the traditional utility type coal fired boilers. This commenter suggested that a more reasonable average heat rate factor for this class of generators would be 12,500 Btu/kWh. Another commenter suggested using a heat rate of 12,000 Btu/kWh.

LETTERS: Foster Wheeler Environmental Corporation (IV-D-50), U.S. Generating Company (IV-D-76 and A-96-56-VIII-B-88), Gilberton Power Company (IV-D-66 and IV-G-26), Panther Creek Partners (IV-G-41)

RESPONSE: Today's rule does not use heat rates to calculate electric output or NOx allowance allocations. EPA is therefore not addressing these comments in today's rule. However, the Agency may need to address these issues in the future when the Agency proposes a rulemaking incorporating output-based NOx allowance allocations.

SUMMARY: One commenter noted that use of an output-based allocation system that includes non-fossil fuel-fired units will dramatically decrease the effective emissions rate to which fossil fuel-fired units are subject (i.e. to 0.12 lb/mmBtu or lower), which may affect the feasibility of compliance. This commenter added that this rate may be lowered further due to the need for a compliance margin and the set-asides for new sources or energy efficiency.

LETTERS: Cinergy Corporation (VIII-C-32)

RESPONSE: The commenter appears to be referring to an allocation system in which State trading program budgets would be determined across the entire 126 region on an output basis and then distributed as allocations to sources. The Agency did not propose to distribute the allowances in that manner; rather, the Agency proposed and is finalizing an approach which would distribute heat-input based State trading program budgets to individual units. The Agency proposed several methods for allocating the heat-input determined State trading program budgets to individual units, including two output-based methodologies. Therefore, in any given State, regardless of the allocation methodology chosen, the calculated effective emission rate after allocation for EGUs in 2007 is 0.15 lb/mmBtu.

In addition, the Agency reiterates that it has not yet determined whether it should allocate only to fossil-fuel-fired sources or to all generation sources on an output basis. Allocating on a heat input basis for the initial five-year period provides additional time to examine whether to include only fossil fuel-fired sources or all generation sources in future updated allocations. See preamble to final section 126 rule, section III.B.3.a.

SUMMARY: One commenter generally opposed an output based approach and noted that EPA does not have the legal authority to implement a section 126 regulatory scheme that includes fossil fuel and non-fossil fuel-fired units.

LETTERS: Cinergy Corporation (VIII-C-32)

RESPONSE: EPA is not determining in today's rule whether to allocate allowances on an output basis only to fossil fuel units or whether to also allocate them to non-emitting electric generators. EPA therefore is not addressing the issue of legal authority to allocate to non-fossil sources in today's rule. Allocating on a heat input basis for the initial five-year period provides additional time to examine whether to include only fossil fuel-fired sources or also non-emitting generation sources in future updated allocations.

SUMMARY: One commenter noted that output based allocations would provide no air quality benefit (and could hinder attainment of the NAAQS in some areas), would increase compliance costs, and would be difficult to implement since it would create tracking and administrative problems and would involve the added complications of obtaining steam output data and determining how it should be combined with the electricity output information.

LETTERS: Cinergy Corporation (VIII-C-32)

RESPONSE: See preamble to final section 126 rule, section III.B.3.a. As discussed in the preamble section III.B.3.a.ii. and contrary to the commenters assertions, EPA found that updating output based allocations will provide ancillary environmental benefits and will in the context of the NOx Budget Trading Program, result in prevention of significant contributions to non-attainment and thereby facilitate attainment, and reduce compliance costs. EPA rejects the commenter's assertion that output based allocations would hinder attainment because OTC States would have higher allowance allocations. The distribution of allocations does not determine how emissions will be distributed. On the contrary, the trading program allows allowances to be transferred to sources needing them.

The Agency's analysis that looked at the implications of various allocation methods (docket # A 97-43, category XI-B-01) found that some potential ancillary environmental benefits could be achieved in an updating output allocation method when compared with a heat input approach. The Agency agrees with the commenter that reallocating allowances based on future energy output could create an incentive to increase electricity output, as supported by the Agency's analysis. The analysis indicated that the increase in electricity output corresponded with an increase in more efficient generation due to the output-based allocation, resulting in net environmental benefits. This does not demonstrate that output-based allocations discourage demand side management as an emissions reduction strategy. Because of the cap on emissions, companies are primarily concerned about reducing emissions to comply with the cap, not increasing electricity, even under an updating output allocation method. Demand side management activities will continue to be one means of reducing emissions, particularly since companies' electricity customers will benefit from such activities. Output-based allocations do not affect the incentive for electricity users to reduce electricity demand in order to save on the cost of electricity. The Agency also rejects the comment that output-based allocations provide little incentive for energy efficiency. The Agency's analysis indicates that the overall efficiency of the electricity generated increases under an updating output-based system.

The Agency also rejects the comment that output-based allocations will significantly increase the costs of compliance. The analysis indicated slight increases in annual costs under any updating allocation system when compared to a permanent allocation system, regardless of whether the allowances are distributed on an input or an output basis. However, under every allocation scenario, the controls applied in the section 126 control remedy were determined to be "highly cost-effective".

EPA intends to propose methodology for collecting output data and using the data to determine allocations. These methodologies will address the "problems" and "complications" raised by the commenter.

SUMMARY: A number of commenters expressed concern regarding EPA's use of plant level electric generation data from EIA 759 and noted that apportioning these data within the plant using heat input data leads to inaccurate generation data at the unit level. One commenter noted that the generation data listed by EPA (for certain plants that submit EIA 759) do not correspond with their records from EIA 759 and that EPA should clarify exactly how the generation data was derived. Similarly, another commenter noted that EPA's electric generation data differs considerably from the commenter's CEM data. One commenter noted that EPA's heat input data (i.e., CEMS data) represents gross heat input and that these data should not be used to determine unit level net generation since the internal load included in gross generation is not always equally distributed among all units. Another commenter noted that for those units that did not have complete heat input data for purposes of apportionment, prorating the net electrical generation based on nameplate capacity is inherently flawed and noted that this method inaccurately assumes that all units would be operating at peak capacity during every hour of the ozone season. One commenter recommended that the generation data be apportioned to each unit based on unit type and unit-specific fuel use. Some of these commenters suggested using EIA 767 data to more accurately determine unit-specific generation data while others suggested that EPA delay the implementation of an output based allocation methodology until more accurate and reliable data are available or can be collected by the Agency. One commenter added that ensuring the accuracy of apportioning generation between different units is important because in many cases, individual generating units are co-owned by multiple companies.

LETTERS: American Electric Power (IX-D-78), Cinergy (IX-D-04 and 105), City of Orrville, OH (IX-D-77), City of Springfield, IL (IX-D-61), Electric Energy, Inc. (IX-D-23), FirstEnergy (IX-D-79 and 115), GPU Genco (IX-D-118), Holland Board of Public Works (IX-D-76), Indianapolis Power & Light Company (IX-D-50 and 114), Northern Indiana Public Service Company (IX-D-127), St. Joseph Light & Power Company (IX-D-138), UtilitCorp United (IX-D-137), Virginia Power (IX-D-80)

RESPONSE: See preamble to final section 126 rule, section III.B.3.a. In the final rule, EPA is allocating allowances based on heat input. Therefore, the commenters' specific objections to EPA's proposed historical output data or specific recommendations on how to derive historical unit level output data are not relevant to the allocation methodology that the Agency has finalized. EPA is therefore not addressing comments on these issues in today's rule. However, one of the reasons that EPA has decided to allocate based on heat input is because of the concerns commenters raised about the quality of the output data. As some of the commenters suggested, EPA intends to develop a methodology to collect more accurate and reliable data that could be used to allocate based on output in the future.

SUMMARY: One commenter referred to EPA's Output Emission Limitations Workgroup and noted that EPA has not completed a draft guidance document for comment. This commenter notes that it is inappropriate for EPA to convene this work group and then not allow an opportunity for comment on the final work product, and recommends that EPA defer implementation of an output based allocation methodology for the section 126 petitions until after a guidance document on this issue has been produced.

LETTERS: Cinergy (IX-D-04 and 105)

RESPONSE: In today's final rule, EPA is allocating allowances based on heat input. The Agency intends to propose a methodology to collect more accurate and reliable data that could be used to allocate based on output in the future. As the commenter suggested, EPA will be able to take into account comments on the draft guidance document before implementing an output-based allocation methodology.

SUMMARY: Some commenters noted that gross generation rather than net generation should be used to determined output based allocations. These commenters noted that co-generation units or other small units could be penalized if net generation is used. One commenter notes that if a unit is in an outage situation or runs as a peaking unit, then the station power may exceed the gross generation, resulting in a negative net generation. This commenter adds that the allocation of allowances should be consistent with the monitoring of NOx and that if the allocation of NOx allowances is based on net generation but EGUs must meet NOx emission rates based on gross generation or gross heat input then all EGUs will be put at a significant disadvantage because of the difference between actual (gross) generation/heat input and net generation/heat input. This commenter recommends that EPA either request actual gross generation data from the affected plants or obtain this information from the EDR quarterly submittals under the Acid Rain Program.

LETTERS: Hamilton, OH (IX-D-72), Holland Board of Public Works (IX-D-76), PG&E Generating (IX-D-68)

RESPONSE: See section III.B.3.a.ii. of the preamble. The EPA is not including output-based allocations in today's final rule. EPA is therefore not addressing these comments in today's rule. However, the Agency may need to address these issues in the future when the Agency proposes a rulemaking incorporating output-based NOx allowance allocations.

SUMMARY: One commenter questioned why EPA chose to use the Acid Rain Program data for heat input but then chose to use electrical generation data from EIA 759. This commenter added that gross electrical generation is available under the Acid Rain Program in EDR Record Type 300 and that to ensure consistency of the data, EPA should obtain all data from DOE forms or should obtain all its data through the Acid Rain Program.

LETTERS: Holland Board of Public Works (IX-D-76)

RESPONSE: EPA disagrees. The Agency notes that units in the Acid Rain Program have the option of reporting either gross electric generation in MWge or gross steam flow rate in lb/hr. Thus, the Agency would not be able to use the generation from the Acid Rain Program for many units. In any case, the Agency is only using one set of data, the heat input data, to calculate NOx allowance allocations. Therefore, the source of the generation data is irrelevant for the final allowance allocations.

SUMMARY: A number of commenters expressed support for an input based allocation methodology or their opposition to an output based methodology in their comment letter as submitted in response to the Notice of Data Availability issued on August 9, 1999. Some of these commenters specifically noted that providing allocations to non-fossil sources is inappropriate. One commenter expressed concern regarding the quality of the electric generation data that would be used for output based allocations. Some commenters noted that EPA does not have the necessary data to accurately provide output based allocations to each EGU. However, one commenter expressed support for an output based allocation approach and noted that this approach would encourage pollution prevention and energy efficiency and will help reduce emissions.

LETTERS: American Electric Power (IX-D-78), Cinergy (A-97-43, IX-D-04 and 105), P.H. Glatfelter (IX-D-18), RJ Reynolds (IX-D-67), Trigen Energy Corporation (IX-D-132), U.S. Steel (IX-D-133)

RESPONSE: See preamble to final section 126 rule, section III.B.3.a. The Agency reiterates that it has not yet determined whether it should allocate only to fossil-fuel-fired sources or to all generation sources on an output basis. In the section 126 final rule, EPA is allocating allowances based on heat input. Therefore, the commenter's specific objections to EPA's proposed historical output data are not relevant to the allocation methodology that the Agency has finalized. However, one of the reasons that EPA has decided to allocate based on heat input is because of the concerns commenters raised about the quality of the output data. As some of the commenters suggested, EPA intends to develop a methodology to collect more accurate and reliable data that could be used to allocate based on output in the future.

SUMMARY: One commenter noted that allowance allocations for section 126 trading should not be based on boiler heat input but rather on the maximum potential NOx emissions for a source if it is operated as permitted.

LETTERS: U.S. Steel (IX-D-133)

RESPONSE: The Agency disagrees. The maximum potential NOx emissions are likely to be much higher than the source's actual NOx emissions, particularly for infrequently operated sources. Such sources will likely receive a large number of allowances that they do not need to account for their actual emissions. In addition, allocations distribute fixed State trading budgets.

Distributing NOx allowance allocations based on the maximum potential NOx emissions, rather than on historical operations or emissions, not only would give more allowances than needed to sources that operate infrequently but also would give fewer allowances than needed to sources that operate frequently. For these reasons, EPA concludes it is more appropriate to base allocations upon historical operation or emissions data than upon the maximum potential NOx emissions.

II.E.2: Initial vs. Subsequent Allocations (EGUs)

SUMMARY: A number of commenters submitted suggestions regarding the consistency of allocation methods between the initial (2003-2005) and subsequent allocation periods. Some commenters noted that EPA should use an output-based, generation-neutral approach for initial (2003-2005) and subsequent allocation periods, and noted that sufficient output-based data for utilities is available (or can be available by 2000) to support initial output-based allocations. However, other commenters noted that EPA should use an input-based approach for initial (2003-2005) and subsequent allocation periods.

Some commenters expressed support for changing the allocation approach after the initial period. A few noted that EPA should clarify in the final rule that the allocation methodology (utilizing 1995, 1996, and 1997 data) shall only apply for the initial (2003-2005) allocation and that allocations for 2006 and thereafter shall be subject to further rulemaking.

LETTERS: Allegheny Power (III-D-62), Allegheny Power (IV-D-86), Associated Electric Cooperative (III-D-41), Coalition for Gas-Based Environmental Solutions (III-D-44), Energy (III-D-88), FirstEnergy (III-D-19), FirstEnergy (IV-D-38), Kansas City Power & Light Company (III-D-33), Kansas City Power & Light Company (IV-D-33), Midland Cogeneration Venture Limited Partnership (III-D-56), Midland Cogeneration Venture Limited Partnership (IV-D-84), Utilicorp United (III-D-24)

RESPONSE: See preamble to final section 126 rule, section III.B.3.a. as well as this Response to Comments section II.E.1. As noted in the preamble to this rule, the Agency has incorporated a heat input approach for the initial set of allocations (2003-2007) and has committed to moving to an output-based allocation approach for electric generating units for allocations starting with the 2008 control period. The Agency disagrees with the commenters that assert that sufficient output data is available to support initial output-based allocations. The Agency proposed unit-specific output data for use in the initial allocations in the October 21, 1998 section 126 proposal as well as in the August 9, 1999 Notice of Data Availability for the section 126 action. In response to the October 21, 1998 proposed allocations, the Agency received numerous comments criticizing the output data that was presented. Commenters suggested that alternative output data was available (i.e., data made available through the Energy Information Administration). In response to these comments, the Agency made data suggested by commenters available for comment in the August 9, 1999 Notice of Data Availability. In response to that notice, the Agency continued to receive adverse comments on the output data that was presented. Specifically, because complete unit specific data was not available from EIA since combustion turbines and combined cycle systems do not report unit level output data to EIA, the Agency apportioned the available plant output data to units using heat input information. Commenters criticized this approach because they asserted that the approach eliminated the incentive for efficiency. Commenters also cited complications associated with that approach in addressing plants that have multiple ownership. The Agency agrees that apportioning the plant data to units based on heat input could eliminate some of the incentives provided by allocating on an output basis at the unit level and could provide complications for plants with multiple ownership. However, the Agency has not found, and commenters did not suggest, alternative sources of complete unit specific output data.

In addition, the Agency specifically solicited comment on steam data from co-generation units in both the original October 21, 1998 proposal as well as the August 9, 1999 Notice of Data Availability. In response to those notices, several plants identified themselves as co-generation plants but only two commenters provided steam data with their comments. Based on these comments, the Agency believes that it has neither a complete set of data for co-generation plants nor a complete list of which units are co-generating.

For these reasons (i.e, lack of unit specific output data for all units and lack of steam data for co-generating units), the Agency disagrees with the commenters that claim that the Agency could make output allocations for the initial control periods (2003-2007). However, the Agency plans to switch to an output system as soon as practicable.

EPA maintains that 2008 is the earliest that it is practical for the Agency to start allocating on an output basis. The Agency believes that the concerns raised by commenters and cited by the Agency for using heat input (rather than output) for the initial allocations should be addressed before issuing future allocations based on output. To collect the necessary output data, the Agency plans future rulemakings to revise the monitoring and reporting requirements. The Agency could propose changes to the requirements in 2000, take public comment, finalize the requirements in 2001, provide sources time to implement the requirements, and start collecting data in 2002. Thus, the earliest the Agency could start collecting output data from affected sources would be starting with the 2002 control season.

The Agency maintains that sources should be provided their allocations about three years prior to the relevant control season. See preamble to the final section 126 rule, section III.B.3.a.i.(1) as well as the preamble to the final NOx SIP call. As stated in those rulemakings, the Agency believes allocating at least three years prior to the relevant control season is important to provide sufficient time for sources to plan for compliance.

In addition, the Agency believes that allocations for multiple control periods should be calculated based on an average of multiple years of data. The Agency originally proposed to base the updated annual allocations on one year's worth of data. The Agency received comments that uniformly criticized basing updated allocations on only one year's worth of data. Most commenters suggested using several years of data in the baseline for determining future allocations in order to provide a more representative baseline. The Agency revised the proposed approach in response to these comments and to accommodate other changes the Agency has made to the proposed allocation method (see preamble section III.B.3.a.i.). In the final allocation approach the Agency is issuing multiple years of allocations, rather than issuing annual updates, in order to provide sources greater certainty for source compliance planning and to provide for the development of forward markets for allowances (see section II.E.4. of this Response to Comments Document). The Agency finds that it is important to base allocations on multiple years of baseline data in order to provide for a representative and appropriate baseline, and this is particularly true where several years of allowances will be allocated using the baseline.

The Agency believes that, in general, the longer the baseline period, the more representative the data. However, for determining the appropriate baseline period for the initial update, the Agency must balance the benefits of having a longer baseline period with its commitment to move to an output allocation system as soon as practicable. On balance, the Agency has decided that basing the first update on three years of data (2002-2004) would be sufficient to provide for a representative baseline without delaying unduly implementation of an output allocation approach (see preamble section III.B.3.a.i.). For all future updates, the Agency plans to update the allocations using an average of data from five years.

Therefore, since the Agency can not start collecting output data until 2002 at the earliest and the Agency believes that at least three years of data are appropriate for setting the baseline used for allocations, the Agency can not issue output allocations until 2005 (based on data from 2002, 2003, and 2004). Because sources are to be provided their allocations three years prior to the relevant control season and the Agency can not calculate output allocations until 2005, 2008 is the first year for which output allocations can be determined.

II.E.3: Non-EGU Allocation Methodologies

SUMMARY: Some commenters expressed support for a non-EGU allocation methodology that would be similar to the methodology used for EGUs. One commenter noted that initial allocation approaches should be the same between EGU and non-EGU sources. Another commenter noted that EPA could use the same approach for estimating output at non-EGUs (industrial boilers) as EGUs by using an efficiency factor. In the context of output based allocations, one commenter noted that EPA should encourage non-EGUs to submit steam output data.

LETTERS: Coalition for Gas-Based Environmental Solutions (III-D-44), Trigen Energy Corporation (III-D-80), Wisconsin Dept. of Natural Resources (III-D-43)

RESPONSE: See preamble section III.B.3.b. Consistent with the approach adopted for EGUs, the Agency is adopting initial, heat input-based allocations for non-EGUs. However, unlike for EGUs, the Agency used only 1995 heat input data to determine the allocation baseline for non-

EGUs unless heat input data from later years was available. In addition, for subsequent updates of the non-EGU allocations, the Agency determined in today's rule to issue heat input-based allocations. This differs from the approach adopted for EGUs because the Agency is not confident yet that output-based allocations for all non-EGUs are justified or that a reasonable approach for collecting accurate output data can be developed for all non-EGUs. As stated in the preamble, the Agency acknowledges the commenters' suggestions for approaches that may be used to calculate output-based allocations for non-EGUs, but maintains that it currently does not have sufficient information or basis for justifying output-based allocations for large non-EGUs. For example, EPA does not have access to thermal (steam) output data for non-EGUs and no steam data was provided by non-EGUs through the public comment periods on the proposed allocation data. For additional reasons, please see preamble section III.B.3.b of this section 126 final rule.

SUMMARY: One commenter noted that it is inappropriate to determine the NOx allowance allocation for non-EGU units based only on the 1995 control period. This commenter added that a more reasonable approach is to allow operators to propose a typical year or series of years if 1995 was not typical for their operations. Another commenter noted that non-EGU allocations should not be based on the regional average controlled emission rate of 0.17 lb/mmBtu, and that EPA should use the uncontrolled emission rate used to develop the state budgets and the reduction percentage found to be cost-effective in determining the state's non-EGU budget as the allocation emission rate. Another commenter added that the use of the 0.17 lb/mmBtu rate requires reductions greater than the 60 percent EPA found to be cost-effective. One commenter noted that the use of heat input as the basis for determining allocations for large non-EGUs in the trading program is questionable, and that this "fuel-neutral" approach is arbitrary and capricious because it favors natural gas usage at the expense of coal, oil, wood, and other fuels. Another commenter asserted that the allocation methodology for non-EGUs is unclear and EPA should develop a technical support document that provides detailed information on its proposed NOx allowance allocation methodology.

LETTERS: ALCOA (A-96-56-VIII-B-97), American Forest & Paper Association (III-D-70), (IV-D-21), Eastman Kodak Company (III-D-2), Indianapolis Power & Light Company (IV-D-15), New York Dept. of Environmental Conservation (III-D-49), Williams Gas Pipelines (IV-D-6)

RESPONSE: See preamble section III.B.3.b of today's section 126 final rule. The preamble to this final section 126 rule describes the methodology used to calculate the unit specific allocations for affected non-EGUs. In the August 9, 1999 Notice of Data Availability, EPA solicited comment on alternative years of data for the non-EGUs. Where data is available and acceptable the Agency has incorporated data from additional years beyond 1995.

The Agency agrees with commenters that on an individual unit basis, the heat input-based approach described above could result in an individual unit allocation that differs from a 60 percent reduction at that unit. This is because applying a 60 percent control level to each unit in a group of units (e.g., non-EGUs in a given State) would result in a range of emission rates for the group. EPA also notes that the heat input approach is a fuel neutral approach that encourages higher emitting plants to control more. However, the Agency disagrees with the commenter that asserted that the use of the 0.17 lb/mmBtu emission rate requires greater reductions across the control region than the 60 percent used in determining the overall budgets and rejects the comment that allocating on the basis of 0.17 lb/mmBtu might not be cost-effective. As discussed in the final NOx SIP call as well as the October 21, 1998 section 126 proposal, 0.17 lb/mmBtu is the average effective emission rate for large non-EGUs after large non-EGUs achieve a regional reduction of 60 percent (in the NOx SIP call region), which the Agency has determined to be highly cost-effective. In the allocation methodology, the Agency uses 0.17 lb/mmBtu for the sole purpose of initially proportionally allocating the non-EGU portion of the state trading program budget to the large non-EGUs affected by the section 126 rulemaking. Once the Agency determines each unit's proportional share of the total (by multiplying the unit's baseline level of heat input by 0.17 lb/mmBtu), each unit's allocation is adjusted so that the total allocations issued matches the portion of the state trading program budget assigned for existing sources. With this adjustment, the total allowances issued is consistent with the 60 percent control level assumed in setting the State trading program budget for large non-EGUs. The Agency could have used an alternative emission rate (for example, 0.15 lb/mmBtu or 0.20 lb/mmBtu) for calculating the initial unadjusted allowance level and each unit would still end up with the same level of allowances after the initial allocations are adjusted to match the budget.

The Agency rejects the comment that the heat input-based approach is "arbitrary and capricious" because it inappropriately favors natural gas (commenter's assertion). This commenter has provided no support for why it believes that using heat input as a basis for allocations inappropriately favors natural gas. Actually, the heat input based approach treats all fossil fuels the same. The Agency is authorized to assign emission limitations to individual sources in the form of allowance allocations and has determined that a fuel neutral heat input approach is the most appropriate approach for distributing allowances to non-EGUs.   The Agency has determined that a heat input-based approach is preferable to an approach that utilizes a percentage reduction from baseline emissions (the methodology that was adopted for developing the State non-EGU budget) for several reasons. Distributing allocations on a heat-input basis provides a fuel-neutral method of allocating to the units in the trading program similar to the allocation approaches proposed for the electric generating units.   Fuel neutral allocation approaches allocate to every unit on the basis of fuel usage, encouraging higher emitting plants to control more whereas a percentage reduction approach rewards historically higher emitting sources. At the time the aggregate emissions level was determined (during the NOx SIP call proposal process), heat input data for individual units was not available. Heat input data is now available for use in developing allocations.   Heat-input based allocations also allow for reallocating in the future (to accommodate new units) whereas allocations based upon a specific percentage reduction do not. Therefore, the Agency is adopting the heat input based methodology in today's rule.

SUMMARY: One commenter recommended that EPA determine non-EGU allocations by using heat input data from the single highest year between 1995 and 1998 and added that this approach would give the operators of affected sources the greatest flexibility and will eliminate periods of shutdown, maintenance and reduced operating rates from the baseline data.

LETTERS: Tosco Refining Company (IX-D-57)

RESPONSE: See preamble section III.B.3.b. of the section 126 final rule. In response to other comments that the allocation method for non-EGUs should use multiple years on the allocation and should mirror the allocation method for EGUs, EPA has instead chosen to use the average of the two highest amounts of heat input from the ozone seasons for 1995 through 1998 to allocate NOx allowances to non-EGUs, where sources have provided acceptable data and have indicated that heat input data for 1995 alone are not representative. This approach allows the use of multiple years where non-EGU owners and operators make such data available. The Agency believes that this approach gives operators flexibility to eliminate periods of shutdown, maintenance and reduced operating rates from the baseline data, as compared to the proposed approach of using heat input data for 1995 alone. In addition, EPA believes it is more equitable to allow for the use of the same allocation baseline period for both EGUs and non-EGUs where sufficient information is available.

II.E.4: Timing and Length/Duration of Allocations

SUMMARY: A majority of commenters expressed support for permanent or long-term allowance allocations. One commenter noted that the trading program should provide for long-term allowance allocations based upon the same factors used to develop budgets. A number of commenters noted that this approach would allow for greater certainty with respect to source compliance planning and would provide for the development of forward markets. One commenter noted that the proposed schedule for allocations is inappropriate since it would be administratively cumbersome and would create uncertainty and risk for sources regarding investments in control technologies, incentives to generate more electricity, and market distortions. This commenter expressed support for 5 to 10 year allowance allocations. Another commenter noted that EPA should periodically re-allocate NOx allowances based on actual operating performance of the sources.

Some commenters incorporated by reference their comments on this issue as submitted in response to the NOx SIP call. Some of these commenters expressed support for either a permanent or long-term (more than 10 years) allocation of allowances. Others expressed support for a five to ten year allocation of allowances. One commenter noted that EPA should not impose a uniform timing requirement for allocations.

LETTERS: Allegheny Power (III-D-62), (IV-D-86), and (A-96-56, V-H-140 as incorporated by reference) Associated Electric Cooperative (III-D-41), Cinergy (III-D-18), (IV-D-40), Duke Energy (III-D-88), (IV-D-89), Empire (MO) District Electric Company (III-D-59), (IV-D-79), Environmental Defense Fund (III-D-37), (IV-D-46), FirstEnergy (III-D-19), (IV-D-38), Indiana

Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), Kansas City Power & Light Company (III-D-33), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), New Hampshire Department of Environmental Services (A-96-56, V-H-72 as incorporated by reference in IV-D-36), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), PP&L (III-D-89), (IV-D-49), and (A-96-56, V-H-119 as incorporated by reference), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Tennessee Valley Authority (III-D-78), and (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utilicorp United (III-D-24), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), Virginia Power (II-D-6), (III-D-63), (IV-D-80), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-71)

RESPONSE: See preamble sections III.B.3.a.i. and III.B.3.b.i.

II.E.5: Allocation Issues for New Sources

SUMMARY: One commenter noted that there should not be a set-aside for new sources, and that existing sources should not have their NOx allocations reduced in order to create set-aside accounts.

A majority of commenters expressed support for the concept of a new source set aside. One commenter specifically expressed support for the level of the new source set-aside as proposed by EPA. However, many commenters noted that EPA should incorporate flexibility into its programs to allow States to determine the appropriate level of set-asides for new sources, that State specific growth factors can be used to determine these levels, and that EPA should work with States to ensure that new and modified sources are accommodated in the design and implementation of the State NOx cap. One commenter noted that this set aside should remain small to minimize the burden on core sources. A few commenters specifically noted that the set-aside for Missouri should be 2 or 3% of the trading program budget in 2003, 2004, and 2005, and 1.5% in subsequent years. One commenter recommended that PSD and NSR processes could be used to help evaluate the impact of growth from new sources within each State and determine State-specific new source set asides. However, some commenters noted that State growth factors should not be used and that more information is needed before new source set asides can be determined based on these factors.

LETTERS: Allegheny Power (III-D-62), (IV-D-86), American Forest & Paper Association (III-D-70), (IV-D-21), Associated Electric Cooperative (III-D-41), Cinergy (III-D-18), (IV-D-40), Illinois EPA (III-D-9), (IV-D-5), Indiana Dept. of Environmental Management (III-D-60), Kansas City Power & Light Company (III-D-33), (IV-D-33), Midwest Ozone Group (III-D-66), Missouri Dept. of Natural Resources (IV-D-23), Natural Gas Supply Association (III-D-22), (IV-D-27), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), New York Dept. of Environmental Conservation (III-D-49), (III-D-49), Ozone Attainment Coalition (III-D-46), (IV-D-52), South Carolina Dept. of Health & Environmental Control (III-D-82), Tennessee

Valley Authority (III-D-78), (III-D-78), Utilicorp United (III-D-24), Virginia Power (III-D-63), (IV-D-80)

RESPONSE: See sections III.B.3.a.ii(4) and III.B.3.b.ii.(3) of the preamble to the section 126 final rule.

SUMMARY: Some commenters raised specific concerns regarding the allocation of allowances to new sources. One commenter noted that initial allocation for new units should be based on the unit's applicable SIP NOx emission rate and subsequent allocations should be based on the source's actual ozone-season emissions. Another commenter noted that EPA should be open to final comments on the proposed allocation scheme, including the adequacy or appropriateness of the proposed 5% and 2% set-asides, after a final NOx budget is published for each state and commenters can determine the impact of any proposed changes to the initial allocation. Other suggestions specific to new source allocations include a recommendation that EPA bank any unused allowances in the new source set aside for future new source use, and that EPA re-propose the new source set-aside by allocating credits outside of the stringent limits imposed on coal-fired utilities.
Some commenters incorporated by reference their comments on this issue as submitted in response to the NOx SIP call. Some of these commenters asserted that a set-aside for new sources should not be part of the allocation process. However, a number of commenters noted that a set-aside is necessary to account for future sources that begin operation during the course of the trading program.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21), Arch Coal (III-D-6), Indiana Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), Natural Gas Supply Association (A-96-56, V-H-125 as incorporated by reference in IV-D-27), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), and (A-96-56, IV-D-233 as incorporated by reference), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Tennessee Valley Authority (III-D-78) and (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-71), Wisconsin Dept. of Natural Resources (III-D-43)

RESPONSE: See sections III.B.3.a.ii.(4) and III.B.3.b.ii.(3) of the preamble to the section 126 final rule. Today's rule bases new source allocations on the lesser of 0.15 lb/mmBtu for EGUs (and 0.17 lb/mmBtu for non-EGUs) or the lesser of the unit's permitted emission limit. EPA maintains that there is no basis for deferring resolution of the question of the size of the new source set-aside until final NOx SIP call budgets are issued. The allocations finalized with this section 126 rule incorporate changes that have been made to the NOx SIP call budgets in the December, 1999 technical amendment. The changes made in the technical amendments to the budgets are not be significant enough to affect the appropriate percentage size of the new source set-aside. EPA maintains that the new source set-aside is adequate to cover future new sources until they begin to receive allocations as existing units. Since, in addition, it is important for any unused new source allocation to be reallocated to minimize any adverse effect on existing unit's allocations, the final rule does not bank unused set-aside allowances, but rather redistributes them each year.

The Agency disagrees that the new unit set-aside should come from allowances outside the State budgets. This effectively would inflate State budgets, potentially reducing the ability of the program to reduce NOx emissions sufficiently to achieve its environmental goals. In addition, the State budgets include growth (reflecting a projected growth rate) expected from new units through 2007, and this projected growth rate was used to set the size of the new source set-aside.

SUMMARY: One commenter noted that the draft model rule has two provisions related to the set-aside pool that could seriously impede or prevent the development of new, clean power generation in Maryland and other similarly situated states - the provision to define new sources as those that began operation after January 1, 1996 and the provision to establish the allocations from the new source set-aside pool based on a 0.15 lb/mmBtu emission rate. This commenter recommends that all currently permitted affected sources be included in the initial allocation and that new EGU sources be eligible to receive allocations from the combined EGU/non-EGU set-aside pool. In addition, this commenter recommends that allocations from the set-aside pool be limited to the maximum permitted control period emission rates.

LETTERS: Venable, Baetjer and Howard, LLP (IV-G-217)

RESPONSE: See sections III.B.3.a.ii(4) and III.B.3.b.ii.(3) of the preamble to the section 126 final rule. EPA maintains that the new source allocation provisions of the final rule will not hinder development of new sources. Today's rule provides that sources commencing operating on or after May 1, 1997 are allocated allowances out of the new unit set-aside until they qualify for allocations (in future updated allocations) as existing units. This approach is necessary since those units would not have heat input data for at least two control periods, which is the basis for allocating to existing sources for 2003-2007. Units that started operation on May 1, 1997 are treated as new units for purposes of receiving allocations for 2003-2007 because the Agency does not know what time of the day they began operation. Today's rule allocates to new sources starting from the day in which they commence, or are projected to commence, operation. The allocations are from a combined EGU/non-EGU set-aside and are based on the lesser of 0.15 lb/mmBtu for EGUs (and 0.17 lb/mmBtu for non-EGUs) or the permitted emission limit.

II.E.6: Other Allocation Issues

SUMMARY: A few commenters noted that retired units should be allowed to hold and receive

NOx allowances to ensure that regulated companies have an appropriate number of allowances if their retired units need to come on-line due to customer demand. However, one commenter noted that granting retired units a perpetual right to NOx emission allowances is inconsistent with EPA's stated goal of tracking market conditions, and that the retired unit exemption should be eliminated.

Some commenters incorporated by reference their comments on this issue as submitted in response to the NOx SIP call. These commenters expressed support for a retired (or shut down) unit exemption. These commenters noted that allowing non-operating sources to participate in the trading program would be an incentive to retire older high emitting facilities and would also assure that the regulated companies have appropriate allowances if they were to come back on-line due to customer demand.

LETTERS: Associated Electric Cooperative (III-D-41), DuPont (A-96-56, IV-D-349 as incorporated by reference in IV-D-73), FirstEnergy (III-D-19), (IV-D-38), and (A-96-56, IV-D-201 as incorporated by reference), Kansas City Power & Light Company (III-D-33), (IV-D-33), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Utilicorp United (III-D-24), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: EPA agrees with the commenters that support the retired unit exemption. EPA notes that under the final Part 97 rule, retired units do not keep receiving allowances indefinitely. Consistent with the allocation methodology for all existing units, a retired unit will receive an allocation for a control season in which it was not operating if it retired after the period on which allocations for the relevant control season were based. If a unit retires after the 1997 ozone season, it will receive an allocation in 2003, 2004, 2005, 2006, and 2007. After 2007, the unit would no longer receive an allocation. If a unit retires after the control season in 2004 but before the beginning of the control season in 2005, the unit will receive an allocation through the 2012 control season but not after 2012. In other words, allocations will not be adjusted after they have been issued. In addition, EPA notes that because the trading sources in the Federal NOx Budget Trading Program are subject to an emissions cap, whether or not retired units are allocated allowances makes no difference in total NOx emissions from participating source categories. This approach provides some incentive to retire units while still reflecting market conditions when allocations are updated.

SUMMARY: A number of commenters addressed the issue of adjusting the budget or allocations to account for early reductions, efficiency improvements, or other facility changes. Some commenters expressed support for providing recognition for early, voluntary reductions in NOx emissions that may predate the NOx allocation base years as well as recognition for real NOx reductions that have occurred as a result of switching to renewable sources of energy. Another commenter expressed support for the adjustment (in § 97.42(e)) to a unit's allocation to account for decreases in utilization or shifts in generation.

LETTERS: AMP-Ohio (III-D-13, (IV-D-17), Hamilton! (OH) Dept. of Public Utilities (III-D-65), (IV-D-74), New York Dept. of Environmental Conservation (III-D-49)

RESPONSE: See section III.B.4. of the preamble to the section 126 final rule. Today's rule provides a compliance supplement pool that may be distributed for early NOx reductions by NOx Budget Units. The rule retains the provision in § 97.42(e) for adjusting new source allocations to reflect actual heat input.

SUMMARY: A number of commenters noted that due to exceptional circumstances (generally in 1995 and 1996), such as mothballing, construction, repairs, economic dispatch, etc., the heat input data for certain units are too low and as a result the affected utilities would be denied a fair and adequate level or amount of allocations for these units. Other commenters noted generally that EPA should consider atypical baseline year comments in developing a final inventory.

LETTERS: (All items refer to Docket A-96-56): Detroit PLD (VIII-B-206), Duquesne Light (VIII-B-144), Hamilton, City of (VIII-B-217), Holland Board of Public Works (VIII-B-198), IL EPA (VIII-B-62), Lansing Board of Water & Light (VIII-B-189), MI South Central Power (VIII-B-163), MOG (VIII-B-125), Niagara Mohawk (VIII-B-225), Utility Air Regulatory Group (VIII-B-197), Virginia Power (VIII-B-168), WV Chamber of Commerce (VIII-B-195), Wisconsin, State of (VIII-B-232), Wyandotte, City of (VIII-B-116)

RESPONSE: See sections III.B.3.a.ii. and III.B.3.b.ii. of the preamble to the section 126 final rule. For EGUs, the final rule bases allocations on the highest two ozone season heat input values for 1995 through 1998. The Agency made data from 1998 available for comment in the August 9, 1999 Notice of Data Availability and has incorporated the use of 1998 data in the final allocation methodology to respond to many of the commenters' concerns that data from at least two years between 1995 and 1997 were unrepresentative. For non-EGUs, EPA proposed to allocate based on 1995 heat input data. However, in the August 9, 1999 Notice of Data Availability, EPA specifically requested comment providing data for the years 1996, 1997, or 1998 if the source believed that data for 1995 were not representative of more recent operation. In that August 9, 1999 notice, EPA proposed that in the final rule, EPA would pick the 2 highest years' worth of heat input out of a 4-year range (if at least two years of data are available) for the initial allocation. (If a non-EGU did not provide extra years of data, then EPA treated the unit's heat input in 1995 as representative and used that as the basis for the initial allocation.) Therefore, if a source had an exceptional circumstance that resulted in unrepresentatively low heat input in 1995 and 1996, the source could still have its allocation based upon representative heat input from 1997 and 1998 as proposed in the August 9, 1999 Notice of Data Availability.

The Agency maintains that an updating allocation methodology can address changing market conditions (such as shifting generation from one unit to another due to changing economic conditions (economic dispatch)) while still ensuring that the methodology provides sufficient time for sources to plan for compliance. That is one reason that the Agency has finalized an allocation methodology under which, every five years, the allocations for existing sources will be updated and a new baseline will be used for allocating to sources.

SUMMARY: One commenter claimed that it was left off the proposed allocation list and should be included in the allocations, but asserted that it experienced unusual circumstances (varying from repairs to generation shifts due to economic decisions (economic dispatch) every year from 1995 to 1997 and requested that is be allocated based on its heat rated input capacity.

LETTERS: MI South Central Power (VIII-B-163) (IV-G-131)

RESPONSE: The Agency made an allocation to the unit in the list of final 2003-2007 allocations in this section 126 rule. The Agency used 1997 and 1998 heat input data for the unit's 2003-2007 allocations and maintains that allocating based on heat input from the highest two years out of a four year period provides for a representative and appropriate baseline. The Agency recognizes that if a unit did not operate a unit but purchased power from elsewhere (economic dispatch), that decision may affect a unit's allocation but maintains that if economic dispatch affects a unit's operation for three out of four years then that should be considered representative operation of the unit. If circumstances occurred that reduced heat input for more than half of the years 1995-1998, it is highly questionable whether they should be considered "exceptional" and therefore not reflected in the allocations. The Agency rejects the comment that the unit's allocation should be based on its heat rated capacity because the maximum potential NOx emissions are likely to be much higher than the source's actual NOx emissions, particularly for infrequently operated sources. Such sources will likely receive a large number of allowances that they do not need to account for their actual emissions. In addition, allocations distribute fixed State trading budgets. Distributing NOx allowance allocations based on the maximum potential NOx emissions, rather than on historical operations or emissions, not only would give more allowances than needed to sources that operate infrequently but also would give fewer allowances than needed to sources that operate frequently. For these reasons, EPA concludes it is more appropriate to base allocations upon historical operation or emissions data than upon the maximum potential NOx emissions. The Agency also notes that the trading budgets incorporate projected growth through 2007 and that this growth is reflected in each unit's allocation. In addition, the Agency notes that the 2008 and beyond allocations will be updated using more recent data than that used for the initial 2003-2007 allocations.

SUMMARY: Another commenter requested separate allocations for each of it's units #5, #7, and #8 and claimed for economic dispatch reasons, if allocations are made using the proposed allocation methodology, its' units allocations would be too low and requested that it receive allocations based on the unit's rated heat input capacity. This commenter also asserted that a small utility purchasing credits will pay more per credit than a large utility.

LETTERS: Wyandotte, City of (IV-G-80)

RESPONSE: The Agency made separate allocations for the commenter's units' #5, #7, and #8. The Agency used 1997 and 1998 heat input data for unit #5 and #8 2003-2007 allocations and

1996 and 1997 heat input data for unit #7. The Agency maintains that allocating based on heat input from the highest two years out of a four year period provides for a representative and appropriate baseline. The Agency recognizes that economic dispatch may affect a unit's allocation but maintains that if economic dispatch affects a unit's operation for three out of four years then that should be considered representative operation of the unit. If circumstances occurred that reduced heat input for more than half of the years 1995-1998, it is highly questionable whether they should be considered "exceptional" and therefore not reflected in the allocations. The Agency rejects the comment that the unit's allocation should be based on its heat rated capacity because the maximum potential NOx emissions are likely to be much higher than the source's actual NOx emissions, particularly for infrequently operated sources. Such sources will likely receive a large number of allowances that they do not need to account for their actual emissions. In addition, allocations distribute fixed State trading budgets. Distributing NOx allowance allocations based on the maximum potential NOx emissions, rather than on historical operations or emissions, not only would give more allowances than needed to sources that operate infrequently but also would give fewer allowances than needed to sources that operate frequently. For these reasons, EPA concludes it is more appropriate to base allocations upon historical operation or emissions data than upon the maximum potential NOx emissions. The Agency also notes that the trading budgets incorporate projected growth through 2007 and that this growth is reflected in each unit's allocation. In addition, the Agency notes that the 2008 and beyond allocations will be updated using more recent data than that used in the initial 2003-2007 allocations.

The Agency rejects the comment that a small utility will pay more per credit than a large utility. The comment was unsubstantiated and there is no evidence to support the idea that different affected entities will face different market prices for an allowance.

SUMMARY: A few commenters asserted that EPA has in the past allowed economic dispatch decisions to be taken into account in the allocation of pollution trading allowances. They used the Acid Rain Program Rule, 40 CFR § 72.43(e)(ii)(D), as an example. In that rule, the commenters assert that EPA exempts phase I units from the requirement that they surrender SO2 allowances when utilization was shifted from an affected unit to a non-affected unit, when the shifting of utilization results from economic dispatch decisions.

LETTERS: Lansing Board of Water & Light (IV-G-146), MI South Central Power (IV-G-131)

RESPONSE: The Agency rejects the comment. EPA notes that the commenters mis-cite and misstate the provision to which they refer. Under § 72.92(c)(i)(A), phase I units are not required to surrender allowances for shifts in generation to other phase I units. This is because those other phase I units will have to surrender allowances to cover their increased emissions that result from the shift. Allowances must be surrendered for shifts to nonaffected units. Moreover, § 72.92 allows sources that have an existing allocation based on a 1985-1987 baseline to keep that allocation if they reduce their heat input due to shifting to other phase I units, a reduction in total company sales, shifting to non-emitting generation or shifting to foreign generators (§

72.92(c)(1)). The provision does not bear any relevance to the commenters' request to receive an increased allowance allocation because it is operating more than it had during the baseline period for that allocation. The provision referred to does not relate to allocation decisions, only to compliance. The Agency maintains that a unit should receive allocations based on a baseline that incorporates actual operating data. With the updating of allocations, future allocations will be based on a new baseline and will reflect market changes.

SUMMARY: The commenter asserted that operation of its affected plant was atypical during 1995-1996 and that during 1997 and 1998 the plant was operating closer to normal levels. The commenter requested that its' units receive an allocation based on full utilization of its units or based on 1998 utilization.

LETTERS: Lansing Board of Water & Light (IV-G-146)

RESPONSE: The Agency has allocated to the commenter's six units using an average of the two highest out of four years (1995-1998) of heat input data. For each of the commenter's six units,1998 utilization data was one of the two highest years. For three of the affected units, 1997 data was the highest from the remaining three years, whereas for the additional three units, 1995 had the highest heat input from 1995 to 1997. The Agency believes that this provides the commenter a representative and appropriate baseline for its 2003-2007 allocations. If circumstances occurred that reduced heat input for more than half of the years 1995-1998, it is highly questionable whether they should be considered "exceptional" and therefore not reflected in the allocations. The Agency also notes that the trading budgets incorporate projected growth through 2007 and that this growth is reflected in each unit's allocation. In addition, the Agency notes that the 2008 and beyond allocations will be updated using even more recent data than that used for the initial 2003-2007 allocations.

The Agency rejects the comment that the unit's allocation should be based on its full utilization because the maximum potential NOx emissions are likely to be much higher than the source's actual NOx emissions, particularly for infrequently operated sources. Such sources will likely receive a large number of allowances that they do not need to account for their actual emissions. In addition, allocations distribute fixed State trading budgets. Distributing NOx allowance allocations based on the maximum potential NOx emissions, rather than on historical operations or emissions, not only would give more allowances than needed to sources that operate infrequently but also would give fewer allowances than needed to sources that operate frequently. For these reasons, EPA concludes it is more appropriate to base allocations upon historical operation or emissions data than upon the maximum potential NOx emissions.

SUMMARY: The commenter requested that it receive an allocation for its three affected units based on the summer heat input capacity of the units rather than actual utilization data. The commenter asserted that due to exceptional circumstances (a variety of major repairs as well as economic dispatch decisions) a baseline based on 1995-1997 will not be representative.

LETTERS: Detroit PLD (IV-G-167)

RESPONSE: The Agency has allocated to the commenter's three units based on the following years of data: for unit #5, the Agency used 1996 and 1997 heat input; for unit #6, the Agency used 1997 and 1998 heat input; for unit #7, the Agency used 1995 and 1998 heat input. The commenter had asserted that 1995-1997 did not adequately reflect current utilization. However, 1998 heat input was lower than at least one of the three other years of available data for two of the commenter's three affected units. The Agency believes that providing four years from which to select two years of representative data is sufficient to allow for the exclusion of unrepresentative data. If circumstances occurred that reduced heat input for more than half of the years 1995-1998, it is highly questionable whether they should be considered "exceptional" and therefore not reflected in the allocations. The Agency also notes that the trading budgets incorporate projected growth through 2007 and that this growth is reflected in each unit's allocation.

The Agency rejects the comment that the unit's allocation should be based on its full utilization because the maximum potential NOx emissions are likely to be much higher than the source's actual NOx emissions, particularly for infrequently operated sources. Such sources will likely receive a large number of allowances that they do not need to account for their actual emissions. In addition, allocations distribute fixed State trading budgets. Distributing NOx allowance allocations based on the maximum potential NOx emissions, rather than on historical operations or emissions, not only would give more allowances than needed to sources that operate infrequently but also would give fewer allowances than needed to sources that operate frequently. For these reasons, EPA concludes it is more appropriate to base allocations upon historical operation or emissions data than upon the maximum potential NOx emissions.

SUMMARY: The commenter stated that 1995, 1996 and 1997 were unusual years of operation for its affected unit due to various repairs and equipment upgrades. In addition, the commenter stated that a switch in 1981 to hydroelectric generation made the 1995-1997 heat input baseline artificially low. The commenter recommended that 1998 heat input data be used in its allocation, that the allocation should be corrected for growth, and that the affected unit should be granted additional allowances based on NOx emissions "saved" from its hydroelectric generation.

LETTERS: Hamilton, City of (IX-D-72), (IV-E-07), (IV-E-13), (IV-E-208)

RESPONSE: The Agency has finalized a 2003-2007 allocation for the commenter's unit of 110 allowances based on heat input from 1995 and 1998. The Agency notes that the trading budgets do incorporate projected growth through 2007 and that this growth is reflected in each unit's allocation. The Agency disagrees with the commenter's request to receive additional allowances based on its hydroelectric generation. The Agency maintains that the decision to switch to hydroelectric power was made well before the initiation of this rulemaking and for reasons independent of this rulemaking, and therefore should not affect the commenter's allocation for its fossil unit. There is no basis for "rewarding" past decisions. Further, if use of hydroelectric generation reduced the use of the fossil unit for three of the four years, it is highly questionable whether that circumstance should be considered “exceptional” and therefore not reflected in the allocation. EPA notes that, under an output allocation method and if the Agency decides to allocate to non-NOx emitting generation sources in the future, the commenter could receive allocations for its hydroelectric generation. See preamble section III.B.3.ii for a discussion of heat input vs. output-based allocations.

SUMMARY: The commenter requested that 1998 data be substituted for 1996 data due to exceptional circumstances and requested that heat input for 1995 and 1997 be adjusted to reflect decisions made for economic dispatch reasons.

LETTERS: Marquette Board of Light and Power (IV-G-210)

RESPONSE: The commenter’s unit is not affected by the final rule and therefore, the Agency is not addressing these comments in today’s rule.

SUMMARY: One commenter noted that including 1997 and 1998 data is beneficial but that given current growth rates, it is clear that certain units will be utilized to a greater capacity in the near future. This commenter recommends that allocations be based on current and/or projected capacity.

LETTERS: Holland Board of Public Works (IX-D-75)

RESPONSE: The Agency maintains that 1995-1998 represents the most recent data for the Agency to use in the allocations. The Agency notes that the trading budgets incorporate projected growth through 2007 and that this growth is reflected in each unit’s allocation. In addition, the Agency notes that the 2008 and beyond allocations will be updated using more recent data than that used for the initial 2003-2007 allocations.

SUMMARY: The commenter requests that it receive an allocation based on full utilization of the affected units. The commenter asserts that 1995-1997 summer utilization was artificially low because the plant decided to purchase power from outside suppliers (due to a gas pipeline construction project during those years).

LETTERS: Holland Board of Public Works (IV-G-155)

RESPONSE: See preamble section III.B.3.a. The Agency has allocated to the commenter’s two units using an average of data from 1998 and the highest year from 1995, 1996, and 1997. The Agency finds that it is important to base allocations on multiple years of baseline data in order to provide for a representative and appropriate baseline, and this is particularly true where several years of allowances will be allocated using the baseline. The Agency believes that, in general, the longer the baseline period, the more representative the data. The Agency believes that for the 2003-2007 allocations, providing four years from which to select two years of representative data is sufficient to allow for the exclusion of unrepresentative data. If circumstances occurred that reduced heat input for more than half of the years 1995-1998, it is highly questionable whether they should be considered “exceptional” and therefore not reflected in the allocations.

The Agency rejects the comment that the unit’s allocation should be based on its full utilization because the maximum potential NOx emissions are likely to be much higher than the source’s actual NOx emissions, particularly for infrequently operated sources. Such sources will likely receive a large number of allowances that they do not need to account for their actual emissions. In addition, allocations distribute fixed State trading budgets. Distributing NOx allowance allocations based on the maximum potential NOx emissions, rather than on historical operations or emissions, not only would give more allowances than needed to sources that operate infrequently but also would give fewer allowances than needed to sources that operate frequently. For these reasons, EPA concludes it is more appropriate to base allocations upon historical operation or emissions data than upon the maximum potential NOx emissions.

SUMMARY: A few commenters requested adjusted baselines for use in setting the initial allocations based on their status as a “small entity” under the Small Business Regulatory Enforcement Fairness Act 5 U.S.C. § 601 et seq.

LETTERS: Detroit PLD (IV-G-167), Lansing Board of Water & Light (IV-G-146), MI South Central Power (IV-G-131)

RESPONSE: The Agency believes that it is providing sufficient compliance flexibility by setting the initial 2003-2007 allocations based on two out of four years of data. Part 97 provides additional flexibility for complying with the emission reduction requirements of the rule. The rule allows sources to buy, sell, and bank allowances. The rule also allows sources to generate early reduction credits that may be used for compliance in later years of the program.

SUMMARY: One commenter recommended that for sources that are subject to an emissions limit that is less than 0.15 lb/mmBtu, EPA should allocate NOx allowances based on the lower federally enforceable rate (e.g., units subject to BACT or LAER).

LETTERS: New York Dept. of Environmental Conservation (III-D-49)

RESPONSE: Today’s rule provides that new sources are allocated allowances based on the lesser of 0.15 lb/mmBtu for EGUs (and 0.17 lb/mmBtu for non-EGUs) or the sources’ permitted emission limit.

SUMMARY: Some commenters generally expressed support for an allocation based on a uniform emission rate since it is more equitable than a percentage reduction approach, which has the potential to reward high emitters.

LETTERS: ARIPPA (IV-D-88), Gilberton Power Company (IV-D-66 and IV-G-26), U.S.

Generating Company (IV-D-76 and A-96-56-VIII-B-88)

RESPONSE: See sections III.B.3.a.ii. and III.B.3.b.ii. of the preamble to the section 126 final rule. Today's rule allocates based on an emission rate, not on a percentage reduction.

SUMMARY: One commenter noted that allocation is a distributional issue not an environmental performance issue, and suggested that to resolve conflicting goals, EPA should consider an auction for a portion of allocations (i.e., 5%), which would allow some initial price discovery, provide some compliance flexibility, and ensure that new entrants have adequate access to allowances.

LETTERS: Environmental Defense Fund (III-D-37), (IV-D-46)

RESPONSE: The Agency maintains that an auction is not necessary in this rule to achieve the benefits suggested by the commenter. The Agency has created the new source set-aside to ensure that new entrants have adequate access to allowances and does not believe that an auction is necessary for that purpose. The Agency believes that the federal NOx Budget Trading Program already includes sufficient compliance flexibility for affected sources by providing for banking, early credit generation, and unrestricted trading. In addition, affected sources will receive their allocations three years before the first control period which should provide sufficient time for a market to develop and for price signals to be sent through the market without the need for an auction. An existing NOx allowance market in the Ozone Transport Region will also provide for initial price discovery without an auction.

SUMMARY: Some commenters expressed concern regarding the amount of supporting information for the allocations or the time allowed for purposes of evaluating the allocation methodologies. A few commenters noted that EPA should clearly document its data source and process for determining NOx allowance allocations and the assumptions relied upon in the NOx budget emission inventory. One commenter suggested that EPA propose alternative language for NOx allowance allocations that parallels the three proposed allocation methodologies. Other commenters noted that EPA should extend the time period for comment on its allocation approaches (and associated data) until the budgets are final, adequate information has been provided on how the allocation and budgets were calculated, and/or sufficient time has been allowed for a review by parties external to EPA. Another commenter noted that States should be able to determine allocations, but that if EPA chooses not to allow States to determine the allocation of emissions under a FIP, it should extend the comment period on the issue of federal allocations.

LETTERS: Consumers Energy (III-D-77), East Coast Power, L.L.C. (IV-G-108) and (VIII-B-142), FirstEnergy (III-D-19), (IV-D-38), Hamilton! (OH) Dept. of Public Utilities (III-D-65), (IV-D-74), Indianapolis Power & Light Company (III-D-12), (IV-D-15), Ohio EPA (IV-D-42), Utility Air Regulatory Group (III-D-71), (III-D-72), (IV-D-70), Virginia Power (II-D-6), (III-D-63), (III-D-64), (IV-D-80)

RESPONSE: EPA already provided a reasonable period for public comment on the unit-specific allocations and provided documentation of the data underlying the allocations. Sixty days were provided for comments on the original October 21, 1998 proposal, and an additional 45 days were provided for comments on the August 9, 1999 Notice of Data Availability. In addition, the Agency provided reasonable time for comment on the NOx Budget emissions inventory which was established in other rulemaking actions, not in today's action. Comments received during the NOx Budget emissions inventory development process and accepted in the December, 1999 technical amendment that are relevant to today's action have been incorporated into today's allocations. The Agency was not required to provide rule language for all of the allocation options presented for comment. Sufficient information on the options was provided, with the result that, parties submitted detailed comments on all three options.

SUMMARY: One commenter asserted that EPA should recalculate allocations set out in Appendix A in light of numerous discrepancies and apparent errors throughout the Appendix. This commenter also specifically noted that in a comparison of actual 1997 heat input rates posted on the Acid Rain website with the 2007 calculated heat input rates, 400 units had heat rates above the 2007 estimated rates, which indicates that the allocations are inadequate and will require greater levels of control than EPA has suggested.

LETTERS: Arch Coal (III-D-6)

RESPONSE: The EPA gave the public additional opportunity to comment on, and to provide, heat input data and output data that could be used as the basis for allocations. See sections III.B.3.a.ii. and III.B.3.b.ii. of the preamble to the final rule, the notice of data availability at 64 FR 43124, and the reopening of the comment period for the notice of data availability at 64 FR 50041. The Agency then used these data and data provided by commenters to develop the final allocations in the appendices to part 97.

EPA disagrees that the heat input growth estimated for 2007 will result in inadequate allocations. The commenter has not identified the specific units to which it refers. The Agency notes that the 1997 heat input data on the Acid Rain website is annual, and not for the ozone season. Therefore, it is inappropriate and misleading to compare these heat input data to the ozone season heat input for 2007. One would expect most or all of these annual values for 1997 to be higher than ozone season heat input for any given year.

SUMMARY: One commenter generally noted that the allocation methodologies used to establish the budget and the tonnage allocations are inconsistent. Another commenter incorporated by reference its comments submitted in response to the NOx SIP call, which stated that EPA should set initial NOx allocations consistent with the method used for establishing the budgets.

LETTERS: Midwest Ozone Group (III-D-66), Indianapolis Power & Light Company (A-96-56, V-H-40 as incorporated by reference in IV-D-15)

RESPONSE: See preamble section III.B.3.a. and III.B.3.b. The Agency agrees that the allocation methodology is not identical to the approach used to develop the budgets. For example, the non-EGU sector budgets were based upon percentage reductions in NOx emissions from 1995 levels; allocations for the non-EGU sector will be based upon each unit's fraction of all heat input in a state, using the heat input from either 1995 or the average of the two highest years from 1995 through 1998. In addition, EGUs will receive allocations based upon the average of the two highest years from 1995 through 1998, whereas the EGU sector budget was based upon the heat input from the higher of 1995 or 1996.

However, the Agency does not believe it is necessary or appropriate to use exactly the same approach for allocations and for the initial budgets. As discussed in section III.B.3 of the preamble, EPA will update allocations for sources without adjusting the State budgets. EPA's analysis shows that this has potential environmental benefits (see "Economic Analysis of Alternative Methods of Allocating NOx Allowances"). In order for EPA to update allocations, the Agency must depart from the initial data used for the State budgets. Also, EPA believes it is more appropriate to allocate to non-EGUs on the basis of historical operations and the same NOx emission rate (0.17 lb/mmBtu), rather than to allocate based on the percentage of reductions; this is consistent with the approach for allocating to EGUs.

SUMMARY: Some commenters noted generally that EPA should work closely with states to develop an appropriate NOx allocation process and should allow as much flexibility as possible in the allocation of NOx budgets within each state. Another commenter incorporated by reference their comments submitted in response to the NOx SIP call, which stated that EPA should allow states to adjust the allocation method to their specific needs.

LETTERS: Tri-State Industrial Network (III-D-67), Virginia Power (II-D-6), (III-D-63), (III-D-64), (IV-D-80), West Virginia Chamber of Commerce (III-D-17), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21)

RESPONSE: Section 126 requires EPA (rather than States) to adopt emission limits for sources covered by the approved section 126 petitions. The allowance allocations, coupled with the NOx cap and the requirements to hold allowances, constitute the emission limits. EPA must select the allocation method and, for reasons discussed in the preamble, has decided for EGUs to allocate initially based on heat input and to update based on output. Where a State submits a SIP revision that includes a trading program, the State has flexibility in how it allocates allowances.

SUMMARY: Some commenters incorporated by reference their comments submitted in response to the NOx SIP call, which stated that EPA should clarify the role that the public and the regulated community will have in the creation of allowance allocations.

LETTERS: Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-

71)

RESPONSE: The EPA provided a full opportunity for public comment on the allocation methodologies and data requirements considered by EPA and adopted in the final rule and on the data used by EPA to develop the initial allocations for existing units for 2003-2007. Opportunity for comment was provided in connection with the October 21, 1998 section 126 proposal and the August 9, 1999 Notice of Data Availability, as well as throughout the NOx emission inventory development process for the NOx SIP call. The Agency does not believe that further public input is required or necessary concerning the methodology and data requirements and the existing units' 2003-2007 allocations. As discussed in section II.K. of this Response to Comments document, for other allowance allocation determinations beyond those for existing units for 2003-2007, today's rule provides that the Administrator will determine, using informal adjudicatory procedures, the updated existing unit allocations, the initial and updated new unit allocations, compliance supplement pool allocations, and opt-in unit allocations. As described more fully in section II.K, the public will have an opportunity to object to these allocations.

SUMMARY: One commenter noted that EPA should include an energy efficiency and renewable energy set-aside in the rules that address downwind non-attainment under Section 126 (for the same reasons that this type of set-aside is an integral part of the NOx SIPs) and that a failure to provide allowances to companies that displace electricity production from utilities subsidizes the existing utilities at the expense of companies deploying new technologies. One commenter noted that there should not be any set-aside for renewable energy sources or to reward energy efficiency.

Numerous commenters incorporated by reference their comments on energy efficiency as submitted in response to the NOx SIP call. Commenters expressed support for the inclusion of an energy efficiency and renewable energy set-aside to reward actions that reduce NOx emissions in a NOx cap and trade system. Many of these commenters favored allowing states to have the option for including such a set-aside to address their own needs, and for allowing states flexibility in designing such set-aside systems. One commenter noted that EPA should have considered direct, rather than alternative energy efficiency reductions in it cost-effectiveness analysis by reducing the budgets and setting aside a specific amount of allowances for energy efficiency and renewable projects. However, some commenters expressed opposition to the inclusion of an EPA mandated energy efficiency and renewable energy set-aside provision stating that including such a set-aside is a policy decision which should therefore be left to the States. Other commenters stated that an energy efficiency set-aside was unnecessary, as economics and the allowance market would drive energy efficiency projects anyway.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), American Forest and Paper Association (A-96-56, V-H-93 as incorporated by reference in IV-D-21), Duke Energy (A-96-56, V-H-134 as incorporated by reference in IV-D-73), Natural Gas Supply Association (III-D-22), (IV-D-27), (A-96-56, V-H-125 as incorporated by reference in IV-D-27), New Hampshire Department of Environmental Services ((A-98-12, III-D-42), as incorporated by reference in IV-D-36), (A-96-56, V-H-72 as incorporated by reference in IV-D-36), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Trigen Energy Corporation (IV-G-218), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: In its October 21, 1998 section 126 proposal on the eight petitions, EPA did not propose including an energy efficiency and renewable energy set-aside. EPA believes it would be appropriate to include an energy efficiency and renewable energy set-aside only after further notice-and-comment rulemaking. The Agency agrees with commenters that energy efficiency and renewable projects are important and should be encouraged. EPA believes that there is a large potential for energy efficiency and renewable energy in the 126 region that reduce demand and provide for more environmentally-friendly energy resources. EPA recognizes that promotion of energy efficiency and renewable projects can contribute to a cost-effective NOx reduction strategy.

Some commenters claimed that set-asides for energy efficiency and renewable projects would undermine the market-based system and least cost solutions for reducing NOx emissions, subsidize uneconomic efficiency improvements, and grant renewable projects double benefits or greater competitive advantage. None of the commenters presented any data or studies to substantiate these claims. However, numerous studies by organizations such as DOE, ACEEE and other organizations point to the many environmental and economic benefits that can be achieved by adopting energy efficiency and renewable energy measures.

Currently, States have the option of including an energy efficiency and renewable energy set-aside in their State rules for meeting the NOx budget in response to the NOx SIP call. Under §51.121, a State may allocate a portion of the trading budget to reward energy efficiency and renewable energy projects for their contributions in reducing NOx emissions.

SUMMARY: Many commenters incorporated by reference their comments submitted in response to the NOx SIP call that have to do with the resolution of some of the design issues that EPA raised in the preamble of the Supplemental Notice of Proposed Rulemaking for the NOx Budget Trading Rule regarding an energy efficiency and renewable energy set-aside. Some commenters expressed concern that the lack of adequate monitoring and verification procedures would make the program impossible to implement while another commenter asserted that implementing such a set-aside program without adequate monitoring and verification procedures could erode confidence in the credibility of a NOx allowance and jeopardize the viability of the trading system.

LETTERS: Indiana Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), New Hampshire Department of Environmental Services (A-96-56, V-H-72 as incorporated by reference in IV-D-36), Southern Company (A-96-56, V-H-

44 as incorporated by reference in IV-D-39), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: In its October 21, 1998 section 126 proposal on the eight petitions, EPA did not propose including an energy efficiency and renewable energy set-aside and final part 97 does not include one. Therefore, EPA does not believe these comments are relevant in the context of this section 126 action. However, EPA agrees with commenters that the credibility of an allowance is important in ensuring a viable allowance market.

As explained above, States have the option of including an energy efficiency and renewable energy set-aside in their State rules for meeting the NOx budget in response to the NOx SIP call. Under §51.121, a State may allocate a portion of the trading budget to reward energy efficiency and renewable energy projects for their contributions in reducing NOx emissions. If a State were to include such a set-aside it would be responsible for ensuring adequate monitoring and verification procedures.

II.F.1: Compliance Supplement Pool Distribution

SUMMARY: Several commenters suggested that the compliance supplement pool be distributed by EPA to States, which could then distribute the pool to affected sources. These commenters asserted that States are more familiar with the affected sources than EPA and therefore better equipped to distribute the pool. They also raised concerns that distribution by EPA would cause delays due to logistics. One commenter suggested that States be required to inform EPA of their distribution plan 180 days before May 1, 2003. If a State fails to do so, EPA could then distribute them by default. However, other commenters expressed support for the proposed approach of having EPA maintain the responsibility of distributing allowances from the compliance supplement pool.

LETTERS: Allegheny Power (III-D-62), (IV-D-86), American Forest & Paper Association (III-D-70), Century Aluminum (III-D-61), City Utilities of Springfield (MO) (III-D-20), (IV-D-93), Duke Energy (III-D-88), (IV-D-89), Indiana Dept. of Environmental Management (III-D-60), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), Northeast States for Coordinated Air Use Management (III-D-26), Tennessee Valley Authority (III-D-78), Virginia Power (III-D-63), (III-D-64), (IV-D-80), Wisconsin Paper Council (III-D-35)

RESPONSE: See section III.B.4.b. of the preamble to this rule for a discussion of why EPA retained the responsibility of distributing the compliance supplement pool allowances to sources.

While EPA recognizes that a State agency may be more familiar with its sources than EPA, EPA does not believe that this will impact the distribution of compliance supplement pool allowances because they will be distributed for early reductions rather than to sources which demonstrate a need. Early reduction credits are based only on a unit’s heat input and NOx emissions rate.

Under part 97, sources are required to submit all requests for early reduction credits by February 1, 2003 and the final rule provides that the Administrator will give public notice of the final amount of early reduction credits requested for sources in each State. EPA has then committed to responding to those requests and allocating the pool allowances by May 1, 2003. Therefore, EPA rejects commenters concerns that distribution by EPA could lead to delay. Sources will know how many credits they will receive before the start of the control period and can plan their compliance strategy accordingly.

SUMMARY: A number of commenters raised issues regarding balancing the use of the compliance supplement pool for both early reductions and compliance extensions. Some noted that EPA should distribute allowances from the compliance supplement pool only for early reductions. These commenters asserted that direct distribution of these allowances for compliance extension purposes should not be allowed, since it may provide an incentive for sources to delay the implementation of necessary controls. However, other commenters noted that EPA should not limit distributions from the compliance supplement pool to the scope of early reductions.   Some of these commenters noted that distributions from the compliance supplement pool should be made for early reductions first, with the remainder distributed for compliance extensions, which will be important for addressing short-term reliability concerns. Commenters raised concerns that sources cannot rely on early reduction credits because the number they receive may be less than the number they generated if there is ratcheting down due to over-subscription. Additionally, they argued that distribution for early reduction credits may not provide the relief needed by sources that cannot install controls by 2003. Two commenters asserted that the entire pool should be distributed directly to sources, citing concerns similar to those of the commenters who advocated for a combination of early reduction credits and direct distribution.

One commenter felt that the compliance supplement pool may not provide the anticipated flexibility to sources that cannot comply on time, since effectively early reduction credits do not expire and the pool is relatively small which could force sources into non-compliance. The commenter suggested that therefore, unused new source set-aside allowances be made available to sources in non-compliance at a price higher than the market clearing price rather than redistributed to sources. One commenter argued that instead of establishing a supplement pool, provisions for early reductions should be established as a set-aside which would come out of the initial budget. In the initial allocation period, the “early reduction set-aside” would be allocated first and then the remaining budget would be allocated proportional to sources’ reduction responsibilities.

LETTERS: American Forest & Paper Association (III-D-70), Cinergy (III-D-18), (IV-D-40), City Utilities of Springfield (MO) (III-D-20) (IV-D-93), Connecticut Dept. of Environmental Protection (IV-D-19), Environmental Defense Fund (III-D-37) (IV-D-46), Indiana Dept. of Environmental Management (III-D-60), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), New York Dept. of Environmental Conservation (III-D-49), (IV-D-44), Northeast States for Coordinated Air Use Management (III-D-26), Tennessee Valley Authority

(III-D-78), Wisconsin Dept. of Natural Resources (III-D-43), Wisconsin Paper Council (III-D-35)

RESPONSE: See section III.B.4.b. of the preamble to this rule.

According to EPA analysis, all sources should have time to install controls by 2003. Therefore, the trading budget is large enough for all sources to be in compliance even at the start of the trading program in 2003. However, EPA included the compliance supplement pool to provide sources with an additional pool of allowances for use in 2003 and 2004. Moreover, even assuming for the sake of argument, that an individual source was unable to install controls by 2003, that source may buy allowances from other sources. Therefore, EPA rejects the commenter's assertion that additional allowances, such as unused allowances from the new source set-aside, need to be distributed via a mechanism other than the allowance market to ensure that all sources will be in compliance.

As EPA has explained, it received comments regarding the effect of the section 126 rule on electricity reliability at the start of the program. In response to commenters' concerns, despite disagreeing with them, EPA included a compliance supplement pool. If early reductions were rewarded as a set-aside from the initial budget, rather than through the compliance supplement pool as it is under part 97, EPA would not be addressing the commenters' concerns because it would not be providing sources with an additional pool of allowances. Moreover, a source that did not make early reductions would be allocated fewer allowances out of the trading budget. The EPA does not believe it is appropriate to reduce a source's allocation because it did not reduce its emissions before the required compliance date.

SUMMARY: Two commenters submitted comments in favor of allowing affected sources to generate unlimited early reduction credits. Commenters argued that removing the cap on the compliance supplement pool would increase the incentive to sources to make early reductions beyond the level of the compliance supplement pool as well as stimulate the market by creating additional allowances for potential trading.

LETTERS: Cinergy (III-D-18) (IV-D-40), Environmental Defense Fund (III-D-37) (IV-D-46)

RESPONSE: See section III.B.4. to this rule and the Response to Comments Document for the May 1999 section 126 Rulemaking action (section IV.D.) for a discussion of the cap on the compliance supplement pool.

SUMMARY: A number of commenters submitted suggestions regarding how to distribute or allocate early reduction credits. One commenter noted that instead of establishing a supplement pool, provisions for early reductions should be established as a set-aside. Some commenters objected to the limitation that early reduction credits be granted for reductions in 2001 and 2002 and expressed support for allowing early reduction credits to also be issued for reductions in the year 2000. Some commenters suggested that EPA use a more stringent emission limitation, such as 0.20lb/mmBtu, as a prerequisite for obtaining early reduction credits. However, others submitted recommendations for easing the requirements, such as requiring only a 10% reduction, issuing credits simply based on reductions achieved beyond those required by Title IV, or raising the emissions rate requirement to 0.30 lbs/mmBtu or 0.35 lbs/mmBtu.

Some commenters incorporated by reference their comments on the issue of early reduction credits as submitted in response to the NOx SIP Call. Most of these commenters expressed support for awarding early reduction credits, many recommending specific parameters for doing so. Some commenters recommended that EPA set the qualifying level based on Title IV limits. Other commenters suggested that OTC allowances banked in Phase II of their program could be used as early reduction credits in the NOx Budget Trading Program, either one-for-one or at a discount ratio, depending on the level beyond which credits were awarded in the latter program. One commenter criticized EPA's suggestion that if early reduction credits were awarded, they be awarded at the company level to reduce concern over utilization shifting, arguing instead for individual source awards. This commenter recommended that EPA consider awarding early reduction credits on the basis of a unit's actual activity level and any real reduction in its emission rate. A few commenters supported early reduction credits and banking only if coupled with flow control.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D- 21), American Municipal Power-Ohio, Inc. (A-96-56, V-H-29 as incorporated by reference in IV-D-17), Champion International Corporation (A-96-56, V-H-126 as incorporated by reference in IV-D-45), Cinergy (III-D-18), (IV-D-40), City Utilities of Springfield (MO) (III-D-20) (IV-D-93), Environmental Defense Fund (III-D-37) (IV-D-46), Hamilton, Ohio, City of (A-96-56, IV-D-147 and V-H-43 as incorporated by reference in IV-D-74), Illinois EPA (III-D-9) (IV-D-5), Indiana Department of Environmental Management (A-96-56, V-H-116 as incorporated by reference in IV-D-72), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), and (A-96-56, V-H-72 as incorporated by reference), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), Virginia Power (III-D-63) (III-D-64) (IV-D-80), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-71)

RESPONSE: See sections III.B.4.b. of the preamble to this rule explaining EPA's requirements for early reductions. For EPA’s response to the suggestion that a set-aside be created to reward early reduction credits see the previous comment summary and response above in this section (III.F.1.).

The early reduction credits will be allocated to individual sources. Sources may request early reduction credits for reductions made during the 2001 and 2002 ozone seasons equal to the difference between 0.25 lb/mmBtu and the unit’s NOx emission rate, multiplied by the unit’s actual heat input for the applicable control period provided certain conditions are met. The allowances awarded from the compliance supplement pool will be eligible for use in the first two years of the NOx Budget Trading Program (2003 and 2004) and will not be subject to flow control. Under final part 97 flow control cannot be triggered, regardless of the number of banked allowances, until 2005. The EPA included this additional flexibility in response to commenters' concerns regarding electricity reliability during the initial years of the program despite disagreeing with them. For further discussion of the management of banked allowances please see section III.B.5. of the preamble to this rule and section II.F.2. of this Response to Comments Document.

Under final part 97, only early reductions made during the 2001 and 2002 ozone seasons are eligible to receive allowances from the pool. Rewarding reductions made in 2000 could result in reductions that were made in response to other programs, such as Phase II of the Acid Rain Program, rather than in response to the Federal NOx Budget Trading Program.

Additionally, the Agency has required that units that are applying for early credit must monitor and report their NOx emission rate and heat input in accordance with subpart H of Part 97 for the full control period on which its baseline emission rate and utilization is determined (the 2000 ozone season). As part of the Agency's approach to issuing early reduction credits, the final part 97 rule language requires that the monitoring data availability be not less than 90%. This will prevent units from increasing their reported baseline emission rates by failing to keep their monitoring systems operating properly and using substitute data that may overstate emissions. The EPA notes that the median availability for NOx monitoring systems in 1997 was about 98% for oil and gas units and 99% for coal-fired (EPA 1997 Compliance Report, Acid Rain Program at 21 (EPA-430-R-98-012(August 1998))).

The EPA also requires a unit to reduce its NOx emissions rate to less than 80 percent of its NOx emission rate in 2000. EPA believes that a less stringent requirement, such as reducing its NOx emission rate to less than 90 percent, would reward reductions that may represent normal variations in NOx emissions rather than significant early reduction efforts in response to the section 126 control remedy.

Numerous commenters suggested requiring a less stringent emission rate. As explained in detail in the preamble to this rule (section III.B.4.b.), EPA analysis shows that less stringent emissions rates would result in vast over-subscription to the pool. One commenter also suggested the more stringent level of 0.20lbs/mmBtu. However, EPA analysis shows that this would result in a severely under-subscribed pool as sources could potentially generate only about 75,000 early reduction credits total in 2001 and 2002. Additionally, based on IPM projections, EPA expects units that install SNCR to operate at an average emissions rate of 0.21 lbs/mmBtu. If the required minimum emissions rate were 0.20lbs/mmBtu, approximately half of the units that installed SNCR in response to the section 126 control remedy could not receive credit.

Today's final rule explicitly allows banked OTC allowances for 2001 or 2002 to be used as early reduction credits and to be allocated allowances from the compliance supplement pool. For further response to the comment that OTC banked allowances should count as early reductions under the Federal NOx Budget Trading program see the comment summary and response below, in this section (III.F.1.).

SUMMARY: Some commenters noted that if the amount of valid requests for early reduction credits are more than the size of the State's pool, the credits should be distributed among the sources which generated certified early reduction credits on a pro-rata basis proportional to a sources' annual reduction obligations (or allowance allocation) as identified in the NOx budget.

LETTERS: Associated Electric Cooperative (III-D-41), Kansas City Power & Light Company (III-D-33), Tennessee Valley Authority (III-D-78), Utilicorp United (III-D-24)

RESPONSE: See section III.B.4.b. of this rule for a detailed discussion of how EPA will distribute the compliance supplement pool allowances if the pool is over-subscribed. If there is over-subscription EPA will distribute the pool's allowances pro-rata based on the number of certified credits a source generates. EPA believes this is the only method that does not eliminate all incentive to continue to generate early reduction credits even after the pool has reached full subscription.

SUMMARY: Some commenters raised issues with respect to the integration of early reduction credit distributions between Ozone Transport Region (OTR) States and non-OTR States. A few commenters noted that States in the Ozone Transport Commission (OTC) are given disproportionately small compliance supplement pools as a result of the more stringent controls already installed on their sources, which prevents these sources from fully converting any early reductions created through over-compliance with the OTC NOx Budget Program. Some suggested that the compliance supplement pool be allocated to the OTC region as a whole to reduce any forfeiture of banked OTC allowances. Another commenter noted that the amount of banked OTC allowances could reflect early reductions, reduced utilization, or trading transactions, and that EPA should ensure that the distribution of the compliance supplement pool as proposed be based only on actual early reductions using the same methodology as determined for sources in non-OTR States.

Other commenters suggested that OTC allowances banked in Phase II of their program could be used as early reduction credits in the NOx Budget Trading Program. One commenter argued that the banked OTC allowances should be carried over either one-for-one or at a discount ratio, depending on the level beyond which credits were awarded in the latter program while another asserted that the banked allowances should be counted one-for-one as early reductions as the emissions requirements are essentially the same. One commenter that does support the integration of the OTC program with the federal program, noted that NOx allowances banked under the OTC NOx trading program should not be considered early reductions under the federal trading program.

LETTERS: Allegheny Power (III-D-62) (IV-D-86), New York Dept. of Environmental Conservation (III-D-49), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), Tennessee Valley Authority (III-D-78)

RESPONSE: For an explanation of early reduction credit distribution among OTR States and non-OTR States please see section III.B.4.b. of the preamble to this rule.

The EPA recognizes that OTC States recently initiated a NOx trading program under which their sources have made significant reductions. Under today's rule, affected sources in the OTC may carry-over their banked OTC allowances as early reduction credits in an amount reflective of their emissions reduction responsibilities under the section 126 control remedy. To be certified as early reduction credits under the Federal NOx Budget Trading Program, the banked OTC allowances have timing and monitoring requirements that are essentially equivalent to those for credits generated by sources outside of the OTC. EPA maintains that any limited differences in the monitoring requirements for early reduction credits for OTC allowances are justified by the need to integrate the OTC NOx trading program and the federal NOx Budget Trading Program.

The purpose of the compliance supplement pool is to address concerns that sources may not be able to make reductions under section 126 by May 1, 2003. Each State's pool is proportionate to the section 126 reductions required since the potential need for additional allowances is likely to be greater if the required reduction is greater. The use of State-by-State compliance supplement pools is also consistent with the use of State-by-State trading budgets or allowance allocations.

The EPA disagrees with the comment that creating a region wide compliance supplement pool for the OTC would result in less forfeiture of banked OTC allowances. As explained in section III.B.4.b. of the preamble of this rule, EPA completed a detailed analysis of the potential early credit generation across the entire 126 region. It determined that under the given emissions reduction requirements, the pool would be fully subscribed without significant over-subscription. This analysis also holds true at the State level. The EPA projects units in each State to install the same range of controls and to install them with about the same frequency as EPA projects region wide. Therefore, EPA expects the compliance supplement pool for sources in each individual State to also be fully subscribed and creating an OTC wide compliance supplement pool would not decrease the forfeiture of OTC allowances.

II.F.2: Management of Banked Allowances

SUMMARY: One commenter expressed support for the flow control provisions as proposed by EPA. Another commenter argued for the implementation of flow control provisions for the first year of the trading program as part of the commenter's suggestion to convert the compliance supplement pool to a set-aside program. One commenter supported a more stringent flow control (and a lowering of the budget) as part of the commenter's assertion that under section 126 there should be a "firm cap," i.e., a cap which cannot be exceeded due to the combined useage of banked allowances and current year allocations. However, other commenters noted that EPA should eliminate the flow control provisions or make the offset ratio less punitive. Commenters suggested a ratio of 1.2:1 or 1.3:1, or raising the exceedance criteria from 10 to 20 percent. One of these commenters noted that EPA's flow control approach will impose significant barriers to the creation of an effective trading market, since discounting banked allowances will encourage sources to use current year allowances, which may or may not be available. This commenter also noted that by subjecting early reduction credits and direct compliance extension allowances to flow control in 2004, EPA prevents sources from knowing whether those allowances are sufficient to accommodate delayed compliance plans. Several commenters asserted that flow control decreases the cost-savings associated with banking and reduces sources' incentive to reduce beyond what is required. One utility argued that unlimited banking and early reduction credits should be provided, as generally proposed by EPA. However, this commenter argued that the choice of 10 percent as the exceedance criteria for flow control is too restrictive and appears to be based on compatibility with the OTC model trading rule instead of air quality needs.

Some commenters incorporated by reference their comments on banking as submitted in response to the NOx SIP call. One commenter noted generally that there should be little or no constraints or restrictions on the future use of banked allowances. Some commenters asserted that concerns over banking can be remedied through a trading program based on a subregional control strategy. One state agency generally favored some type of flow control management to discourage the excessive use of banked allowances. Utility commenters generally expressed opposition to management of banked allowances. One utility argued that flow control penalizes a source with a smaller bank more heavily than a source with a larger bank. One commenter noted that restrictions on banking are not necessary but expressed support for flow control management as the most cost-effective and least rigid alternative if EPA determines that banking controls are needed.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21), Associated Electric Cooperative (III-D-41), Champion International Corporation (A-96-56, V-H-126 as incorporated by reference in IV-D-45), Century Aluminum (III-D-61), Cinergy (II-D-23), (III-D-18), (IV-D-40), Environmental Defense Fund (III-D-37), (IV-D-46), Kansas City Power & Light Company (III-D-33), (IV-D-33), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), New Hampshire Dept. of Environmental Services (III-D-42), (IV-D-36), and (A-96-56, V-H-72 as incorporated by reference), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Utilicorp United (III-D-24), Virginia Power (II-D-6), (III-D-63), (IV-D-80), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-71)

RESPONSE: In final part 97, flow control cannot be triggered, regardless of the number of banked allowances, until 2005 (i.e., after completion of the 2004 end of season reconciliation process). Under the October 21, 1998 section 126 proposal, flow control, if applicable, would have begun in 2004 (i.e., after the completion of the end of season reconciliation process in 2003). See sections III.B.5 of the preamble of this rule for an explanation of why EPA delayed the management of banked allowances until 2005 and of how EPA will manage banked allowances under the Federal NOx Budget Trading Program.

The EPA disagrees with the commenters who argued against all constraints or restrictions on the future use of banked allowances. These commenters did not submit any analysis demonstrating that the use of banked allowances in any given season would not be problematic. Under the section 126 action, EPA performed air quality analysis and determined the benefits associated with the level of emission reductions prescribed in the section 126 action. Significant divergence from these levels may result in delayed or reduced air quality benefits. The flexibility introduced with the addition of banking to the Federal NOx Budget Trading program could cause such a significant divergence if management of banked allowances were not also incorporated into the program.

The EPA is concerned that the carryover of unused NOx allowances from one ozone season to another may result in an inter-season problem whereby the NOx reductions needed in one season may be compromised by the existence of a sizeable number of banked allowances eligible for use. Therefore, EPA maintains that some form of management is necessary to discourage the use of a large number of banked allowances in a given control period and to limit the negative impact of excessive use of banked allowances on the trading program budget and therefore, the environment. The EPA believes it is also important to provide a tool to address this accumulation of allowances to ensure the environmental integrity of the section 126 control remedy is maintained. Final part 97 therefore is designed to limit the amount of emissions variability that may occur with banking, while preserving the advantages of banking in the system by avoiding overly stringent limits. The EPA is limiting the potential effects of banking through a flow control mechanism. This flow control mechanism allows unlimited banking of NOx allowances by sources in the Federal NOx Budget Trading Program, but discourages the excessive use of banked allowances, i.e., use when an amount of more than 10 percent of the overall multi-state trading program budget is banked in 2005 or thereafter. The EPA did not begin flow control until 2005 in order to allow sources additional flexibility during the first two years of the program. This approach gives sources greater assurance that they will be able to use compliance supplement pool allowances for compliance and before such allowances expire. As explained in the preamble, EPA does not believe that delaying flow control one year beyond what was originally proposed will jeopardize the environmental goal of this program. Some commenters suggested alternative, less stringent, flow control mechanisms such as a withdrawal ratios of 1.2:1 and 1.3:1, or a higher trigger level of 20% rather than 10%. However, these commenters submitted no basis for these alternatives. EPA chose the 2:1 withdrawal ratio and the 10% trigger level because they would discourage over use of banked allowances and are consistent with the levels used in the OTC NOx Trading Program and will thereby facilitate integration of the two trading programs. The EPA believes that delaying the implementation of flow control by just one year, from 2004 to 2005, together with adopting the compliance supplement pool, strikes an appropriate balance between commenters' concerns and the environmental goal of section 126, i.e., to eliminate significant contribution from named sources as expeditiously as practicable.

Furthermore, EPA disagrees with the commenter who asserted that flow control disproportionately penalizes sources with smaller banks. If there are enough banked allowances region wide to trigger flow control then the same discount ratio is applied to all banked allowances when they are used for compliance regardless of the size of the a source's bank.

The EPA believes that the flow control mechanism serves the purpose of discouraging the excessive use of banked allowances in a given control period, while refraining from establishing any absolute limits on the use of banked allowances. The Agency agrees with commenters that a management scheme may reduce sources' incentive to overcontrol emissions or reduce the value of early reductions. However, it believes that flow control represents a balance between source flexibility and the environmental goal of the program since sources will maintain the option to use their banked allowances, albeit at a reduced rate, even in the event that the flow control restrictions are activated. Additionally, because flow control will not be implemented until 2005 it will not affect a source's incentive to generate early reduction credits. Early reduction credits will expire after the end of season reconciliation process in 2004, before flow control may be triggered under final part 97.

The Agency also disagrees with commenters claiming that flow control is not supported by an evaluation of the potential effects of banking . Though OTAG concluded that restrictions on the use of banked allowances may be necessary, EPA has concluded that it is indeed necessary, when a sizeable portion of the allowances are banked, to ensure achievement of the air quality benefits associated with the level of emission reductions prescribed in the section 126 control remedy. In prescribing flow control, EPA has selected a form of management that will only be activated if the budgets underlying the trading program are potentially subject to an exceedance by an unacceptable amount.

The EPA agrees with commenters who asserted that flow control is necessary to discourage the excess use of banked allowances in a given control period. However, EPA disagrees with the commenter who believes that a more stringent flow control is required. The EPA maintains that the flow control mechanism adopted in today's rule reflects a balancing of the advantages and flexibility of banking against the need to protect the environmental goals of the section 126 remedy. Additionally, see section IV.A. (p. 84) of the April RTC for EPA's response to the commenter's suggestion that a "firm cap" should be imposed under section 126.

One commenter, who incorporated by reference comments from the NOx SIP call, claimed that the incremental reductions obtained with flow control are expensive, with the potential to cost over $3000 per ton, as shown by EPA's IPM analysis. The commenter used a figure from EPA's analysis of a phased-in trading program with substantial banking in the first, less stringent phase. The applicability of this figure to today's rule is questionable since the NOx Budget trading Program is a single phase program with a limited compliance supplement pool for early reductions. In any event, it is not surprising than it would generally be more expensive to emit and use allowances when flow control is activated that when flow control is not activated. Indeed, that is how flow control discourages excess use of banked allowances.

EPA rejects the suggestion that concerns over banking can be remedied through a trading program based on a subregional control strategy. As EPA explains in III.B.5. of the preamble to this rule, EPA examined other potential mechanisms for managing banked allowances, including managing allowances at the regional level, and found that a consistent, region wide flow control placed the fewest restrictions on the market and was the most cost-effective approach to managing banked allowances.

II.F.3: General Banking Issues

SUMMARY: One commenter recommended that EPA adopt a Clean Air Investment Fund to ensure cost-effective implementation.

LETTERS: Cinergy (II-D-23), (III-D-18), (IV-D-40)

RESPONSE: EPA did not propose a Clean Air Investment Fund as a part of the section 126 control remedy, and the final part 97 does not include one. As explained in the preamble to this rule, EPA disagrees with the unsupported claim that the NOx Budget Trading Program may lead to excessive compliance costs. The EPA's analysis using the Integrated Planning Model (IPM), shows that a market based NOx trading program will be feasible and that compliance costs will not be excessive under the compliance deadlines and state budgets for this program.

A market-based cap-and-trade program offers many advantages including a reduced cost of compliance, creation of incentives for reductions beyond those required by regulations, promotion of innovative methods for increasing emission reductions, and increased flexibility. EPA believes that a market-based system offers increased flexibility regarding compliance options available to sources and reduces the cost of compliance since sources have the freedom to pursue various compliance strategies. Under a market-based system, pollution prevention and other innovative methods are encouraged since emission rates below the mandated level allows for the generation of allowances that may be sold on the market.

Final part 97 rule requires compliance with the emissions reduction requirements by May 1, 2003. The EPA believes that this deadline will not impose unreasonable compliance costs that would create the need for a cap on the price of allowances (e.g., through establishment of a Clean Air Investment Fund under which a sources would pay a set fee, rather than make reductions or buy allowances). Seasonal NOx emissions budgets for States were calculated assuming activity growth levels through 2007 and the application of cost-effective controls that are currently available to achieve NOx reductions.

However, in order to provide additional assurance against unanticipated circumstances preventing achievement of the emission reductions required under the SIP call by 2003, the Agency has established the compliance supplement pool. (See section III.B.4. of the preamble to this rule for an explanation of the compliance supplement pool in the Federal NOx Budget Trading Program). This additional pool of emissions will effectively delay the need to install controls for some sources. This further removes any justification for a Clean Air Investment Fund.

In addition, the Agency believes that a Clean Air Investment Fund is not consistent with the concept of a cap and trade program because it provides a mechanism which threatens the integrity of the cap. By allowing sources to pay into a fund in lieu of achieving reductions or purchasing allowances, sources in the trading program may exceed the trading budget. For these reasons, the Agency has not included a Clean Air Investment Fund provision in the proposed rule or in today's final rule.

SUMMARY: Some commenters incorporated by reference their comments on a phase-in program as submitted in response to the NOx SIP call. Some of these commenters expressed support for the idea of a phase-in program only if it did not interfere with a 2003 compliance date. Other commenters supported this approach as a means of reducing the burdens of the 2003 compliance deadline by having the second, more stringent phase begin after 2003. These commenters opposed any phased-in program that would effectively accelerate the compliance date. Another commenter expressed concern about integrating the OTC and the NOx Budget Trading Program with a phase-in program. One commenter noted that rather than establishing a phase-in program, EPA should allow States to grant allowances for voluntary early reductions occurring before the start of the mandatory emission reduction program.

LETTERS: Allegheny Power (A-96-56, IV-D-124 and V-H-140 as incorporated by reference in IV-D-86), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21), New Hampshire Department of Environmental Services (A-96-56, V-H-72 as incorporated by reference in IV-D-36), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: In its October 21, 1998 section 126 proposal, EPA did not propose a phased in Federal NOx Budget Trading Program as apart of the section 126 control remedy, and final part 97 does not include a phase-in trading program. The EPA agrees with commenters that in some situations a phase-in program allows sources flexibility to achieve the overall targeted reductions more quickly. However, section 126 requires reductions as early as possible and therefore, the Agency believes that a phase-in program which would delay the compliance deadline beyond 2003 is an appropriate section 126 control remedy. Furthermore, as explained in the preamble to the May 25, 1999 section 126 rule (64 FR 28302), the technical support document "Feasibility of Installing NOx Control Technologies by May 2003" and the preamble of today's rule, EPA maintains that the compliance date of May 1, 2003 for NOx controls to be installed to comply with the 126 control remedy is a feasible and reasonable deadline.

Considering the opposition to meeting any compliance deadline prior to 2003 and some commenters' concerns regarding electricity reliability and allowance market development, EPA is adopting in today's rule a compliance supplement pool and banking provisions, and is delaying the implementation of flow control until 2005 to provide additional flexibility for sources required to comply with the section 126 control remedy. The EPA believes that the availability of the compliance supplement pool and the flexibility associated with banking will provide many of the same advantages of a phase-in program without adjusting the compliance deadline or requiring any compliance before 2003. The compliance supplement pool is a capped reserve for sources affected by the section 126 rulemaking. Allowances from the pool will be used to reward emission reductions prior to 2003 and provide additional allowances for use during the 2003 and 2004 ozone seasons, as several proponents of phase-in programs were seeking. See sections III.B.4. and III.B.5. of the preamble of today's rule explaining EPA's provisions for a compliance supplement pool and banking in the Federal NOx Budget Trading Program.

SUMMARY: Some commenters incorporated by reference their comments on general banking issues as submitted in response to the NOx SIP call. These commenters noted that banking should be a feature of the trading program regardless of its final design because of its importance in providing needed flexibility to sources, assuring a functioning market, and encouraging early reductions. Some commenters asserted that EPA should allow unlimited and indefinite banking of NOx credits.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21), American Municipal Power-Ohio, Inc. (A-96-56, V-H-29 as incorporated by reference in IV-D-17), Midwest Ozone Group (A-96-56, V-H-58 as incorporated by reference in IV-D-69), Orrville, Ohio, City of (A-96-56, V-H-52 as incorporated by reference in IV-D-85), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), West Virginia Chamber of Commerce (A-96-56, V-H-173 as incorporated by reference in IV-D-71), West Virginia Manufacturers Association, et al. (A-96-56, V-H-102 as incorporated by reference in IV-D-71)

RESPONSE: See section 6.3 of this Response to Comments Document, section III.B.5. of the preamble to this rule and the preamble to the May 25, 1999 final section 126 rule (64 FR 28302) which explain aspects of EPA's provisions for banking. Sources in the Federal NOx Budget Trading Program may bank unlimited allowances and, with the exception of compliance supplement pool allowances, banked allowances never expire.

EPA agrees with the commenters that banking should be allowed in the Federal NOx Budget Trading Program. Banking stimulates market increases, encourages highly cost effective reductions beyond those amounts required and increases flexibility for sources thereby increasing their cost savings. EPA has been careful to structure the banking provisions for the Federal NOx Budget Trading Program, so the flexibility provided by banking does threaten the achievement of the State trading budgets. The limited pool from which allowances can be awarded prior to the start of the program, and the subsequent management provisions limiting somewhat sources' ability to use banked allowances, work together to ensure achievement of the environmental goals of the program.

II.G: Allowance Trading and Tracking

SUMMARY: Some commenters noted that the trading program should provide in all cases for transfer of allowances between facilities owned and operated by the same company.

LETTERS: Associated Electric Cooperative (III-D-41), Kansas City Power & Light Company (III-D-33) (IV-D-33), Utilicorp United (III-D-24)

RESPONSE: Provisions for the transfer of allowances between any entity, such as facilities owned and operated by the same company, are included in the trading program.

SUMMARY: Some commenters noted that sources should have up to three months to reconcile their allowances with emissions. One commenter (UARG, IV-D-70) incorporated by reference their comments submitted in response to the NOx SIP call, which also stated that sources should have three months, October 1 to December 31, to reconcile allowances with emissions and make any necessary trades. This commenter also noted that at least three months are needed to verify emissions and to know their allowance needs and that the additional time is necessary to obtain any needed allowances because the availability of allowances may be limited, particularly if allowances are set at a level that reflects an emission rate as stringent as 0.15 lb/mmBtu.

LETTERS: Utility Air Regulatory Group (A-98-12, III-D-72), (IV-D-70), and (A-96-56, V-H-85, as incorporated by reference); Virginia Power (A-98-12, III-D-63), (IV-D-80)

RESPONSE: EPA disagrees with the commenters who believe 90 days or three months are needed to verify emissions and obtain additional allowances. For the first three years under the Acid Rain SO_2 Program, sources have had 30 days after the end of the compliance period to verify their emissions and purchase any additional allowances. Even though sources achieved 100% compliance, EPA extended the SO_2 allowance transfer deadline to March 1 (60 days after the end of the compliance period) in order to give sources some additional time to make adjustments to allowance holdings and correct any inadvertent errors.[1] Both the Acid Rain Program and NOx Budget Program now have 60 day true-up periods. Based on experience with 30 days, EPA believes a 60 day, or November 30, time frame is reasonable and adequate.

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[1] See the preamble to the August 3, 1998 Revisions to the Permits and Sulfur Dioxide Allowance System Regulations. 63 FR 41358, 41359 (1998).

The EPA also questions those commenters who think the availability of allowances may be limited. Clearly, no one knows for sure how many allowances will be available during the 60 days following the compliance period. However, sources can take action before the end of the compliance period to ensure compliance. Given that the sources will know their emissions on an ongoing basis and the number of allowances they hold, they can project the number of allowances needed for compliance. With this knowledge, sources do not need to wait until the end of the compliance period to purchase allowances. They can also take advantage of the many services provided by brokers, including options and forward contracts.

SUMMARY: A few commenters noted that as proposed by EPA, the ability to identify a responsible party (i.e. an authorized account representative (AAR)) who would be accountable for demonstrating and ensuring compliance should be one of the criteria for including sources in the trading program. Some commenters specifically noted that sources should have the flexibility to identify two or more alternate AARs. One commenter (UARG, IV-D-70) incorporated by reference their comments submitted in response to the NOx SIP call, which also stated that sources should be able to designate more than two authorized account representatives (AARs). This commenter pointed out that EPA's Acid Rain rules now provide this flexibility in certain circumstances, where there are multi state NOx averaging plans, and want similar flexibility for the NOx cap and trade program.

LETTERS: Illinois EPA (II-D-19), Pennsylvania Dept. of Environmental Protection (II-D-26), Utility Air Regulatory Group (A-98-12, III-D-72), (IV-D-70), and (A-96-56, V-H-85, as incorporated by reference); Virginia Power (A-98-12, III-D-63), (IV-D-80)

RESPONSE: Today's rule requires each source to have an Authorized Account Representative (AAR) and allows each source to appoint one alternate AAR. EPA believes one AAR and one alternate AAR is a reasonable balance between a source's need for flexibility and EPA's need for administrative efficiency. This approach has worked successfully under the Acid Rain Program and is consistent with the OTC Budget Program requirements. Furthermore, the computer systems, ATS and NATS, that are currently used to track SO_2 and NOx allowances are designed to handle one AAR and one alternate AAR. Either of these systems could be easily adapted for tracking the allowances under today's NOx Budget Trading Rule. However, allowing two or more alternate AARs, would require substantial design changes to the computer tracking systems. Finally, under the Acid Rain Program, EPA does allow two alternate AARs for a source in limited circumstances where: a unit's utility system is the subsidiary of a company, the units in a NOx averaging plan are operated by a single subsidiary or by two or more subsidiaries, and the NOx averaging plan covers two or more units in more than one State. Since two alternate AARs are allowed only in very limited circumstances in the Acid Rain Program, EPA was able to implement this without making any design changes to ATS. Given that this limited exception exists only because of NOx averaging plans under the Acid Rain Program and there are no NOx averaging provisions in the NOx Budget Trading Rule, EPA believes allowing more than one alternate AAR is unnecessary; the EPA notes that the commenters have provided no showing or explanation why the flexibility provided by having one alternate AAR is not sufficient for the NOx trading program.

SUMMARY: One commenter noted that EPA should broaden the scope of overdraft accounts to cover multiple units at different sources with the same owner, operator, or AAR. This commenter incorporated by reference their comments submitted in response to the NOx SIP call, which also stated that EPA should extend the concept of an overdraft account to allow multiple sources, that either have the same owner or same account representative to use the same overdraft account. In this way even sources with only one unit could be protected by an overdraft account. Furthermore, this commenter claimed that overdraft accounts could be used by the owners and operators of units as “allowance pools” which would be consistent with Title IV of the Clean Air Act, section 403(d).

LETTERS: Utility Air Regulatory Group (A-98-12, III-D-72), (IV-D-70), and (A-96-56, V-H-85, as incorporated by reference)

RESPONSE: The final rule creates an overdraft account for each source with more than one affected unit. EPA chose this approach for two reasons. First, it is consistent with the approach taken by the OTC Budget Program. Second, it avoids the administrative problems associated with sources changing owners/operators and AARs. Given the changes that are taking place in the electric utility industry, many sources are more likely to change owners and operators, as well as AARs. EPA’s experience under the Acid Rain Program supports this contention. If overdraft accounts were linked to owners/operators, or AARs, EPA could have to frequently change the links, for purposes of compliance deductions, between a unit’s compliance account and an overdraft account based on common owners/operators or AARs. Under §97.42, the Administrator first deducts allowances for compliance from a unit’s account and then from the overdraft account applicable to the unit. Changes in owners/operators or the AARs could change what is the applicable overdraft account, and could make it difficult (at best) to administer the NATS. Creating an overdraft account for a source that has more than one affected unit is administratively feasible since the source-unit relationship is not likely to change.

The language cited in section 403(d) of Title IV, particularly section 403(d) applies to the Acid Rain program, not to the NOx Budget Trading Program. Moreover, even under the Acid Rain Program, section 403(d)(2) does not require or authorize the Administrator to allow a unit to use, for compliance, allowances held by units of other sources. See 64 FR 25834, 25835-25837 (1999).

II.H: Enforcement and Compliance Certification

SUMMARY: Some commenters submitted comments opposing EPA’s 3:1 allowance offset ratio, the 153-day presumption, and the provision which considers each excess ton of emissions as a separate violation. Several commenters also incorporated by reference their comments submitted in response to the NOx SIP call in opposition to the Agency’s enforcement provisions.

Several commenters expressed concern that the allowances offsets for excessive emissions are too stringent. These commenters noted that the three-to-one allowance deduction or emission offset is excessive, and may discourage the use of credits and reduce the effectiveness of the trading program. Some commenters suggested that the ratio would be onerous to sources, particularly if an adequate supply of allowances was unavailable.   Others noted that EPA should not include an offset greater than the ratio used under Title IV of the Acid Rain Program. Most of these commenters provided a less stringent suggestion as an alternative, such as a two-to-one or one-to-one offset ratio. Finally, one commenter questioned EPA's legal authority to establish an automatic 3:1 emissions offset under part 97.

EPA received comments in response to the NPR and SNPR regarding the financial penalties that may be imposed when a source's emissions exceed allowances for any control period. A majority of commenters on this issue, both in response to this rulemaking and as incorporated by reference in response to the NOx SIP call, noted that financial penalties should only be assessed if there are indications that offset deductions are inadequate to ensure compliance.

Specifically, some of these commenters expressed opposition to the 153-day presumption for excess emissions, as well as the provision that counts each excess ton of emissions as a separate violation. Some commenters noted that if EPA adopts a policy based on the number of days in violation, the violation should only start on the day on which the unit operated without allowances to cover its NOx emissions. Several commenters argued that a shortage of allowances during the "true-up" period at the end of each ozone season should be counted as one violation, instead of several violations for each day of the ozone season or each ton of NOx emissions in excess of the allowances held. Most commenters asserted that in setting any penalties based on the 153-day provision, EPA should consider the severity of the violation.

In addition, some commenters noted that these financial penalties for each ton of excess emissions could prove to be too burdensome if there are not enough allowances available in the market to ensure compliance. One commenter suggested that each occurrence of excess emissions should be considered one violation, rather than each ton of excess emissions.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), American Forest & Paper Association, Inc. (A-96-56, V-H-93 as incorporated by reference in IV-D-21), Duke Energy (A-98-12, III-D-88), (IV-D-89), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-98-12, III-D-72), (IV-D-70) and (A-96-56, V-H-85 as incorporated by reference), Virginia Power (A-98-12, III-D-63), (IV-D-80)

RESPONSE: The EPA's authority to adopt penalty provisions in these Federal requirements is based on sections 113, 126, and 301 of the Clean Air Act. Section 126 grants EPA broad authority to construct a remedy in lieu of forcing the shut-down of named sources that significantly contribute to downwind non-attainment. The fact that Congress was prepared to shut down named sources shows Congress' seriousness in stopping significant contribution, and provides an indicia of Congress' intent that EPA develop a sufficiently stringent regulatory alternative to ensure that significantly contributing emissions are eliminated. Given this statutory context, EPA believes the 3:1 offset and discretionary monetary penalties are warranted. Further, section 301 grants EPA broad authority to prescribe such regulations as are necessary to carry out its functions under the Clean Air Act (424 U.S.C. 7601). Finally, section 113 specifically authorizes EPA to impose penalties for violation of Clean Air Act requirements. State authority is not an issue in part 97, and will not be addressed in this context.

The EPA disagrees with those commenters that opposed part 97's emissions offset provisions and rejects, as unsubstantiated, comments stating that a 3:1 ratio is excessive and may discourage the use of allowances for compliance. The Agency believes that it is important to set an automatic offset deduction to ensure that non-compliance with the NOx emission limitations is always a more expensive option than controlling emissions. In the allowance trading market, sources choosing to procure allowances to cover excess emissions may purchase either current vintage or banked allowances from other market participants. They may retire current vintage and banked allowances at a 1-for-1 ratio, unless flow control under §97.54(f) is in effect. Under flow control, a certain percentage of the banked allowances are discounted at a 2-for-1 ratio when they are retired for compliance. Since a 2:1 offset may be required when allowances are used for compliance, EPA believes that a 3:1 offset for non-complying sources is necessary to ensure that non-compliance is always more expensive than controlling emissions or using allowances for compliance.

Some of these comments suggested that the offset should be no greater than that levied by the Acid Rain Program for SO_2 control. The Agency notes that the Acid Rain Program does not have a flow control provision for use of banked allowances and additionally, it requires an automatic payment of $2000/ton (which is adjusted for inflation) in addition to a 1:1 offset. Since SO_2 allowances are currently valued at less than one-tenth of the $2000 per ton payment (e.g., around $185 per SO_2 allowance according to September, 1999 market indices), this offset and payment structure is actually more expensive than the 3:1 offset adopted for the NOx Budget Trading Program. In fact, the Agency recently revised the Acid Rain regulations to reduce, in some cases, the potential size of the penalties.

The Agency notes that a trading market will allow sources to avoid all offsets by purchasing the necessary allowances to cover emissions during the ozone season or the true-up period. Moreover, the rule provides for an overdraft account that would be automatically created for each source with two or more NOx budget units. The NOx allowances in the overdraft account will be available for deduction during the annual reconciliation of a NOx budget unit if the unit fails to hold sufficient NOx allowances to cover emissions in its compliance account. In addition to the overdraft account, owners and operators of sources will have the flexibility to bank allowances from a previous year to ensure that there are sufficient NOx allowances to cover the units' NOx emissions for that year's control period. The overdraft account and the option to bank or buy allowances provide additional flexibility for sources in complying with the requirement to hold allowances to cover emissions, and reduce the likelihood of excess emissions and offsets.

EPA believes that financial penalties, coupled with the automatic allowance offset, are appropriate for ensuring compliance with the NOx budget and the emission limit. The allowance deduction is designed to ensure that non-compliance is a more expensive option than controlling emissions. At the same time, EPA has the discretion to impose financial penalties in response to violations of the NOx Budget Program. In deciding whether to impose financial penalties, and, if so, in what amount, EPA may take into consideration the amount of the offsets as well as factors relating to the nature of the excess emissions occurrences (i.e., whether it is a first time, or repeat occurrence). Today's rule simply establishes the outer parameters for potential financial penalties. Penalties, if any, will be assessed on a case-by-case basis.

For example, under today's rule, a NOx Budget unit with excess emissions will be assessed one violation for each ton of excess emissions. Similarly, a NOx Budget unit with excess emissions for a control period may be assessed, under the guidelines set forth in section 97.54 of Part 97, with 153 days of violations. However, the owners or operators of these units may demonstrate that the number of days of violation should be less than 153 days. The EPA agrees that the severity of the violation should be considered in setting any penalties based on the 153-day provision. Nevertheless, the Agency believes that the rule contains sufficient flexibility to ensure that the penalties imposed in response to any violations will not be unnecessarily punitive.

These provisions establish the potential for assessing a financial penalty for each excess emissions ton and each day in the control period. While these represent the most severe penalties that may be imposed, actual penalties are imposed on a case-by-case basis taking into account the nature of the occurrences. EPA therefore maintains that these provisions provide reasonable flexibility for the Agency to gear the penalties to each case of excess emissions. The commenter's suggestion that each case of excess emissions should be treated as a single violation (rather than each excess emissions ton for each control period day) would restrict the Agency's ability to adjust the financial penalties to an individual case. A large amount of excess emissions (tons) may warrant a larger penalty, and today's rule allows the Agency to make such a determination.

SUMMARY: One commenter incorporated by reference their comments regarding compliance certifications. This commenter noted that the November 30 deadline for submitting compliance certification reports should be extended to December 31 to be consistent with the OTC budget rule.

LETTERS: Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39)

RESPONSE: EPA disagrees with changing the deadline for the compliance report. As explained in the Allowance Trading and Tracking section of this Response to Comments Document, EPA believes that the deadline of November 30 provides an adequate amount of time for owners and operators of NOx Budget units to evaluate their reported emissions, obtain any additional NOx allowances they may need to cover the emissions during the ozone season, and submit their compliance certification report to EPA. This 60-day "true-up" deadline is consistent with the true-up period allowed under the Acid Rain Program's SO_2 trading program. The compliance report provides EPA with the AAR's statement of the compliance status of the unit as of the November 30 deadline for allowance transfers. Consequently, today's rule requires submission of the report on that date.

II.I.1: SIP call, FIP, and Section 126 Interaction

SUMMARY: One commenter noted that EPA should use a consistent method of determining NOx budgets for EGUs in actions under section 110, section 126, and the FIP.

LETTERS: Carolina Power & Light Company (A-98-12, III-D-79)

RESPONSE: The Agency agrees, and has used consistent budget methodologies and final budgets for each of these three regulatory actions.

SUMMARY: A few commenters raised issues related to whether States or sources beyond those already covered under the section 126 petitions should be either allowed or required to participate in the trading program. One commenter expressed support for the geographic expansion of the trading program, but noted that this expansion should be conditioned upon the application of uniform control requirements. Another commenter noted that if the scope of the trading program is expanded, States that are not part of the section 126 remedy should be allowed to participate on a voluntary basis. One commenter incorporated by reference their comments as submitted in response to the NOx SIP call on the issue of including sources in states outside the proposed 23-jurisdiction area. This commenter expressed support for allowing states outside the 23-jurisdiction area to participate, particularly Maine, New Hampshire and Vermont, which are covered under the OTC NOx MOU.

LETTERS: ME DEP (II-D-40), IL EPA (II-D-19), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39).

RESPONSE: See section III.A.4. of the preamble to today's section 126 final rule.

Because the NOx Trading Programs under the NOx SIP call and under the section 126 petitions are both designed to achieve the same goal and largely cover the same sources, the EPA has sought to coordinate the two programs. The EPA believes that the expansion of voluntary trading in the section 126 program to sources in States covered by the NOx SIP call program can provide both compliance flexibility and cost savings to the sources covered by the section 126 final rule. Under today's rule, sources in NOx SIP call States that are not covered by the section 126 remedy are *not required* to participate in trading under section 126, but are allowed to participate on a voluntary basis.

The Agency notes that any State whose sources voluntarily choose to trade under the section 126 must be subject to the NOx SIP call and have an EPA-approved and EPA-administered State

NOx Budget Trading Program generally modeled on part 96. The State must revise its State Implementation Plans to adopt such a State trading program and to require sources to meet the emissions control level established in the final rule for the NOx SIP call.

II.I.2: OTC NOx Budget Model Rule

SUMMARY: One commenter noted that the OTC NOx allowance trading and banking program should not be incorporated into the Federal program because it differs in important respects.

Some commenters incorporated by reference their comments on this issue as submitted in response to the NOx SIP call. Several of these commenters stated that the trading program should be integrated with the existing OTC program, while others argued against the need for integrating the two programs. Some commenters said that at least certain aspects of the two programs should not be integrated. To assure integration, some commenters argued that the trading program should include sources in the 15-25 MW range and that allowances earned in the OTC program should be fully fungible in the trading program.

LETTERS: Duke Energy Corporation (A-96-56, V-H-134 as incorporated by reference in IV-D-89), New Hampshire Department of Environmental Services (A-96-56, IV-D-233 and V-H-72 as incorporated by reference in IV-D-36), PP&L, Inc. (A-96-56, V-H-119 as incorporated by reference in IV-D-49), Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39) Tennessee Valley Authority (A-98-12, III-D-78)

RESPONSE: EPA maintains that, in order to streamline regulation for sources and for administrative efficiency, the OTC NOx trading program and the Federal NOx Budget Trading Program should be integrated to the extent feasible. With regards to specific program elements (e.g., banking provisions and early reduction credits), section II.F. of this document discusses integration under the Federal program.

One commenter incorporated by reference its comments submitted in response to the NOx SIP call, stating that the removal of the geographic limits of trading within the OTC could potentially cause an increase in emissions from the OTC States and would be contrary to Congress' intent and EPA's authority. The Agency rejects this comment as unfounded. Based on the Agency's modeling, EPA does not expect emissions to increase in the OTC region from integration of the OTC and section 126 trading programs. Another commenter, by incorporating earlier comments, recommended that sources in the OTC should not be allowed to bring any allowances banked in that program into the NOx Budget Trading Program beyond those allowances earned in accordance with any early reduction credit provisions of the model rule. The preamble to the final NOx SIP call section VII.F. clarifies the Agency's position on OTC banked allowances being brought into the NOx Budget Trading Program.

For the Agency's response concerning the inclusion of units in the 15-25 MW range, see the May 25, 1999 Section 126 RTC, Section IV.C., p. 104-105. As noted in that document, there are significant administrative costs and burdens for EPA and for affected sources to expand applicability to units between 15 and 25 MW. These costs and burdens outweigh any benefits of fully integrating the applicability of Part 97 with OTC applicability. Note, however, that these small units may opt in to the Federal trading program if they desire to do so.

See section VII of the preamble to the final NOx SIP call. Throughout the preamble, the Agency identified the areas where the NOx Budget Trading Program is consistent with the OTC NOx Budget Program.

SUMMARY: One commenter referenced EPA's statement that the OTC NOx MOU requirements are not federally enforceable at this time since these requirements have not been adopted into SIPs. The commenter noted that because the Pennsylvania permitting program has been approved as part of that State's SIP, implementation of the Pennsylvania NOx Allowance regulation through a permit is Federally enforceable.

LETTERS: Pennsylvania Dept. of Environmental Protection (II-D-26)

RESPONSE: The EPA agrees with the commenter's statement.

II.I.3: New Source Review (NSR)

SUMMARY: One commenter noted that the seasonal nature of the NOx budget trading program is not a legal impediment to integration with NSR requirements. This commenter added that EPA should permit NOx allowances traded under a state cap-and-trade program to be utilized to satisfy NSR offset and emission limitation requirements, and that the emission levels established by a source's allowances to set a plant-wide applicability limit should be used for NSR purposes. One commenter incorporated by reference their comments on NSR integration as submitted in response to the NOx SIP call, which claimed that allowing new and modified sources to participate in the NOx trading program as a means of meeting NSR offset requirements is unlawful.

LETTERS: Cinergy (A-98-12, III-D-18), (IV-D-40), Duke Energy (A-96-56, IV-H-134 as incorporated by reference in IV-D-89)

RESPONSE: At this time, EPA is not taking action concerning the integration of the Federal NOx trading program with NSR. EPA will consider the issue of integration in the future, and address all relevant comments at that time.

II.I.4: Title IV NOx Program

SUMMARY: A number of utility commenters, including a utility association, objected to proposed § 76.16 on several grounds. For example, the utilities claimed that exempting certain boilers from any Acid Rain NOx limitations would prevent utilities from including these boilers in emission averaging plans in order to comply with the limitations applicable to boilers that were not exempt. A few utilities and other commenters supported proposed § 76.16 as an attempt to integrate requirements under Titles I and IV.

One commenter noted that even though Title IV has been successful in reducing SO_2 emissions, there would be some additional benefits to implementing annual, instead of seasonal, NOx controls. One commenter expressed support for the integration of the NOx trading and Title IV NOx Control programs. Another commenter noted that EPA's intention with regard to the interaction of this rulemaking with the Title IV NOx program is unclear.

LETTERS: Allegheny Power (A-96-56, V-H-140 as incorporated by reference in IV-D-86), Duke Energy (A-96-56, V-H-134 as incorporated by reference in IV-D-89), Maine Dept. of Environmental Protection (II-D-40), Natural Gas Supply Association (A-96-56, V-H-125 as incorporated by reference in IV-D-27), (A-98-12, III-D-22), (IV-D-27), New Hampshire Department of Environmental Services (A-96-56, V-H-72 as incorporated by reference in IV-D-36), Ohio EPA (A-96-56, V-H-124 as incorporated by reference in VIII-C-12), Tennessee Valley Authority (A-96-56, V-H-135 as incorporated by reference in IV-D-96), Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70), Virginia Power (A-98-12, III-D-63), (IV-D-80)

RESPONSE: EPA proposed §76.16 in the NOx SIP call as a mechanism to integrate the NOx Budget Trading Program with the Title IV NOx program. However, in the final NOx SIP call it did not adopt this provision. See the preamble to the Final NOx SIP Call (63 FR 57476) and section XI of the RTC to the Final NOx SIP Call for EPA's explanation as to why it did not finalize §76.16. EPA did not propose §76.16 in the October 21, 1998 Section 126 proposal nor did it propose another mechanism for integrating the Title IV NOx Program and the Federal NOx Budget Trading Program therefore, the comments are to this rulemaking.

II.J: Miscellaneous Legal Authority Issues

SUMMARY: One commenter incorporated by reference their comments on legal authority, which claimed that the NOx trading program is unlawful because it could not guarantee that the reductions achieved would be in the geographic areas where the Agency states that NOx reductions are needed to eliminate non-attainment.

LETTERS: Utility Air Regulatory Group (A-96-56, V-H-85 as incorporated by reference in IV-D-70)

RESPONSE: EPA modeling of the air quality effects of NOx reductions with and without trading show that trading has little effect on the geographic location of overall NOx reductions. EPA intends to conduct periodic review of the results of any NOx trading program that is established in order to determine whether appropriate NOx reductions are being achieved.

II.K: Permitting

SUMMARY: The commenter asserts that all sources subject to part 97 should be required to have federally enforceable permits because part 97 is not enforceable on its face, and therefore can't be used to ensure compliance for sources that aren't required to have a federally enforceable permit. The commenter requests that EPA (1) reconsider its position that the rule is enforceable on it's face, (2) work with the State to permit, through FESOPS, sources not required to have title V permits, or (3) issue EPA permits or require sources to obtain title V operating permits.

LETTERS: Illinois Environmental Protection Agency (III-D-09, IV-D-5)

RESPONSE: EPA designed the permits provisions of the Federal NOx Budget Trading Program to provide flexibility so that a variety of State permits could be used for ensuring source compliance with the Federal NOx Budget Program as long as they are federally enforceable.

Today's rule states that, for those sources that require federally enforceable permits, such permits (whether permits under a title V operating permits program or some other program) must include Federal NOx Budget Trading Program requirements and must be administered primarily through the regulations established by the State to implement those permits programs. For NOx Budget sources (i.e., the smaller sources) that do not require a federally enforceable permit, part 97 does not require a NOx Budget permit. Part 97 itself is the mechanism for ensuring the compliance of such smaller NOx Budget sources not requiring a federally enforceable permit. Although such smaller sources would not have NOx Budget permits, part 97 expressly requires these (and all other) NOx Budget sources to comply with all other NOx Budget program requirements, including holding of allowances to cover emissions, monitoring, recordkeeping, and reporting of emissions. In short, contrary to the commenter, part 97 is enforceable on its face, even without a permit.

With respect to the commenter's suggestion that the Federal NOx Budget Trading Program require all participants to have a title V operating permit, EPA believes that requiring all Federal NOx Budget sources to have a title V permit would be unduly burdensome and that proper implementation of a Federal NOx Budget Trading Program can be achieved through federally enforceable permitting vehicles in addition to those established under title V and 40 CFR part 70 or 71. EPA therefore rejects the suggestion that NOx Budget sources be required to have a title V permit.

SUMMARY: The commenters state that since title V programs specify when permits can be amended, and only provide for permit revisions every 5 years, a "large implementation dilemma" would be created since many utilities have title V permits "with less than 3-years tolled."

LETTERS: Midwest Ozone Group (III-D-66), Tri-State Industrial Network (TRINET) (III-D-67), West Virginia Chamber of Commerce (III-D-17)

RESPONSE: The commenters are in error in claiming that title V permits can only be modified every 5 years, or require modification no more frequently than every 5 years; the part 70 regulations specify detailed rules governing the modification and reopening of operating permits and those rules do not correspond to the commenters' apparent understanding. The commenters also appear to believe (again, erroneously) that the remaining permit term of a title V permit has some bearing on when the applicable requirements of part 97 apply to a source. Under § 70.7(f)(1)(i), a title V program must provide for the reopening of title V operating permits to include “[a]dditional applicable requirements under the Act [that] become applicable to a major part 70 source with a remaining permit term of 3 or more years.” However, for those sources with title V permits having remaining terms of fewer than 3 years when new requirements are promulgated, the source is not shielded from compliance with the new requirements by the permit shield, even if a permit shield is provided for under the permitting authority’s title V operating permits regulations. This is because the permit shield applies only for requirements that are already included in the permit, to provide that compliance with the permit shall be deemed compliance with the included applicable requirements; as such, a permit shield has no application for new requirements that have not yet been added to the permit (see § 70.6(f)(1) and 57 FR 32250, 32276-32278 (July 21, 1992)). For title V sources with fewer than 3 years remaining on their permit terms, the new applicable requirements apply outside the title V permit until such requirements are included in the title V permit at the time of title V permit renewal. In short, the permit term remaining on a title V permit has no bearing on whether or when additional applicable requirements apply to a NOx Budget source, and there is no “implementation dilemma.”

SUMMARY: One commenter asks whether permits must be “physically modified” to reflect allowance allocations. Another commenter states that “a change in allowance allocation would require a permit revision” and seems to believe that NOx allowance allocations extending 5 to10 years, while desirous from an economic planning standpoint, would create “an enormous administrative dilemma” because States stagger title V permit issuance over a 3 year period and title V permits have 5 year terms, and hence would add to the “administrative burdens to States and sources.”

LETTERS: Illinois Environmental Protection Agency (III-D-9, IV-D-5), Empire District Electric Company (III-D-59, IV-D-79)

RESPONSE: The assertion that permits must be revised to reflect changes in allowance allocations is erroneous. The Federal NOx Budget Trading Program does not require the permitting authority to include, in the NOx Budget permit, any NOx allowance allocations, transfers or deductions for any NOx Budget unit. Under subparts F and G of today’s rule, the Administrator records these allowance activities in the NOx Allowance Tracking System (NATS). Section 97.6 (c)(8) of the rule, which is also included in every NOx Budget permit, states that “[u]pon recordation [in the NATS] by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of a NOx allowance to or from a NOx Budget unit's compliance account or the overdraft account of the source where the unit is located is incorporated automatically in any NOx Budget permit of the NOx Budget unit.” In other words, NOx allowance allocations, transfers, and deductions add nothing to the administrative burden assumed by a permitting authority in the administration of its title V permitting program or any other permitting program in which NOx Budget permits are administered.

SUMMARY: The commenter states that EPA should clarify how NOx allowance allocations are appealed, since “EPA issues the allocations but the states issue the permits.”

LETTERS: Illinois Environmental Protection Agency (III-D-9, IV-D-5)

RESPONSE: Since the States do not establish NOx allowance allocations, and NOx allowance allocations, transfers, and deductions are not recorded in the NOx Budget permits issued by the permitting authority (see § 97.6(c)(8)), NOx allowance allocations are not appealable through any State permitting appeals process, or through any other State appeals process. NOx allowance allocations are established by EPA, as discussed below.

Unit-specific allocations for 2003-2007 are set forth in Appendices A and B of today's final rule and are appealable, along with other provisions of the rule, in accordance with Section 307(b) of the Clean Air Act. The calculation methodology and data requirements for determining these (and future) unit-specific allocations are also set forth in today's rule and are also appealable in accordance with Section 307(b).

The proposed rule was unclear about what procedures would be used to make other allowance allocation determinations beyond those set forth in Appendices of the rule. Some commenters asked EPA to clarify what role the public and the regulated companies would play in allowance allocation determinations. The proposal did not provide for any opportunity for the public to respond to these other determinations or for the Agency to correct them based on public responses.

Today's rule clarifies that the Administrator will determine updated allocations for existing units through orders issued using informal adjudicatory procedures. The nature of NOx allowances and of the process of updating allocations makes the use of adjudicatory procedures appropriate. First, the Administrative Procedure Act defines adjudication as the "agency process for the formulation of an order" and "order" as "a final disposition ...of an agency in a matter other than rulemaking but including licensing." 5 U.S.C. 551(6) and (7). Further, under the Administrative Procedure Act, "licensing" is "agency process respecting the grant, renewal, denial...of a license", which is in turn defined as "an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission." 5 U.S.C. 551(8) and (9). On its face, the determination of NOx allowance allocation has similarities to the granting of a "license" in that the Administrator is deciding to provide NOx allowances, each of which is a limited authorization to emit up to one ton of NOx in a control period.

Second, the types of issues potentially raised by the updating of NOx allowance allocation are appropriately addressed through adjudication. Today's rule resolves the overarching policy issues concerning the allocation updating process that is set forth in the rule. For existing EGUs, EPA has decided to determine initial allocations using heat input, to update allowance allocations using output, and to propose a rule setting forth the calculation methodology and the data requirements for output-based allocation (as well as output monitoring and reporting requirements). EPA anticipates issuing a final rule concerning output-based allocations in 2001. However, today's rule provides that the calculation methodology and data requirements for input-based allocation -- all of which are finalized in the rule -- will apply until that future final rule becomes effective. For existing non-EGUs, EPA has decided to determine initial and updated allocations using input-based calculation methodology and data requirements finalized in today's rule. Consequently, the allocation updating that is set forth in the rule is likely to raise only limited, factual issues that will be unique to each unit's allocation. These issues include, for example, whether heat input data used in the unit's allocation is from the years that today's rule requires to be used and whether the calculations are mathematically correct. Adjudicatory procedures are appropriate for such case-by-case resolution of factual issues. See Attorney General's Manual on the Administrative Procedure Act at 14-15 (U.S. Department of Justice, 1947) (explaining that rulemaking is "primarily concerned with policy considerations" and that adjudication "may involve the determination of a person's right to benefits under existing law so that the issues relate to whether he is within the established category of persons entitled to such benefits.").

EPA is, of course, addressing and finalizing the initial allocations for existing units for 2003-2007 in this rulemaking proceeding. While the Agency could have chosen to issue these allocations through an adjudicatory proceeding, EPA chose to issue them as part of this rulemaking for several reasons. First, it was administratively efficient to address and resolve in a single proceeding both the overarching policy issues of what calculation methodology and what types of data to use and the more factual issues of applying the selected methodology and data requirements to determine specific initial allocations. In fact, as discussed in the preamble, the Agency's development of proposed initial allocations and examination of the specific data that was available to make such allocations assisted the Agency in deciding what methodology and data requirements to adopt.

Second, in contrast to the future updating of existing-unit allocations, the development of initial existing-unit allocations involved broader issues, some of which were common to many of the individual allocation determinations. While the updated heat-input-based allocations use data collected through the standardized monitoring and reporting requirements finalized in today's rule, the initial allocations were in many cases based on historical data that were collected for other purposes, came from more than one data source, and were inconsistent. EPA had to develop consistent approaches to resolve the resulting data issues, such as what data sources should be given greater weight and under what circumstances should data be revised. EPA's development of these approaches and applications across multiple individual allocations is set forth in this Response to Comments document. Using a rulemaking to issue the initial existing-unit allocations facilitated consistent resolution of common issues involving multiple individual allocations.

The remaining categories of allowance allocations provided for in today's final rule (i.e., initial and updated allocations for new units from the allocation set-aside, allocations from the compliance supplement pool, and opt-in unit allocations) are appropriately handled under adjudicatory procedures, as clarified by today's rule. The provisions for new unit and compliance supplement pool allocations require owners and operators of a unit to submit an application for the allowances. EPA will review each application and determine whether to allocate allowances and, if so, how many allowances to allocate for the unit. With regard to opt-ins, the owners and operators seeking to opt a unit into the trading program must submit an application for an opt-in permit. If the Agency determines that the opt-in requirements are met, the Agency will determined each year the allowance allocations for the opt-in unit. In all these types of cases, the requirements for qualification of allowances and the calculation methodology and data requirements for allocations are finalized in today's rule, and each allocation determination is likely to raise factual issues unique to each allocation. Adjudicatory procedures are appropriate for such case-by-case decision making.

EPA will apply informal adjudicatory procedures to make updated allocations for existing units, initial and updated allocations for new units, compliance supplement pool allocations, and opt-in unit allocations. Under the Administrative Procedure Act, formal adjudicatory procedures are required only in cases of “adjudication required by statute to be determined on the record after opportunity for an agency hearing.” 5 U.S.C. 554(a). Since there is no such statutory requirement applicable to allowance allocation, informal adjudicatory procedures may be used. Use of informal adjudicatory procedures will give the Agency time to determine the allocations, receive any objections, and finalize the allocations within the deadlines set forth in today’s rule.

Today’s rule provides that: the Agency will make available to the public each allowance allocation determination; and objections may be submitted concerning whether the determination is consistent with the requirements for qualifying for allocations, the calculation methodology, and the data requirements in the rule. The Agency will address any objections, as appropriate, and will issue a final allocation determination. EPA does not anticipate that a significant number of allocation determinations will receive objections. However, EPA is likely to process together groups of individual allocation determinations for a specific control period and, for example, is likely to make all updated existing-unit allocation determinations available at one time and finalize them in a single order. The issuance of a final order setting forth one or more allocation determinations (whether for updated allocations for existing units, initial or updated allocations for new units, compliance supplement pool allocations, or opt-in unit allocations) will be the final agency action determining those allocations. Such final agency action is appealable in accordance with section 307(b) of the Clean Air Act.

SUMMARY: Both commenters expressed concern over the potential burden a title V permitting authority would assume because FIP requirements are incorporated into title V operating permits, and those permits would have to be modified again once EPA approved a State’s SIP. Both commented that the burden would be particularly heavy if EPA approval of a State’s SIP came on the heels of FIP reopenings. One commenter stated that it is “highly probable” that some States will submit an approvable SIP at about the same time that FIP requirements are being incorporated by the permitting authority into the title V permits for NOx Budget sources subject to title V. The same commenter goes on to request that EPA “explicitly state” in any finalized FIP that replacement of FIP requirements with requirements established by an approved SIP always be considered minor permit modifications under part 70. Another commenter suggested that EPA provide that FIP conditions be incorporated into a title V permit with provisions that make the FIP conditions null and void upon approval of a State’s SIP, and that the SIP provisions automatically apply.

LETTERS: Indianapolis Power and Light (III-D-12), Utility Air Regulatory Group (III-D-71)

RESPONSE: The current title V regulations in parts 70 and 71, as well as any future revisions to these regulations, govern what level of permit modification is necessary to replace part 97 applicable requirements with applicable requirements under an approved SIP, for title V sources.

The EPA believes that these regulations should govern how title V permits are modified, and today's rulemaking does not alter the modification provisions of parts 70 or 71. Separate state regulations will govern the replacement of part 97 applicable requirements with applicable requirements under an approved SIP in federally enforceable state permits for non-title V sources. States are not required to adopt in their SIPs a NOx trading program, much less one consistent with the Federal NOx Budget Trading Program. Given the range of possible requirements a source might have under a revised SIP, EPA maintains that it is not reasonable or appropriate for the Agency to specify at this time what permit revision procedures must be used. EPA notes that part 70 already provides some flexibility for permitting authorities in the context described by the commenters. Under § 70.7(f)(1)(i), only those title V permits with remaining terms of 3 or more years would need to be modified to include additional applicable requirements. Title V permits with fewer than 3 years remaining on their permit terms could have such requirements incorporated into their permits at the time of title V permit renewal.

II.L: Other Miscellaneous EGU/Trading Comments

SUMMARY: One commenter noted that EPA cannot consider controls beyond the named sources or source categories in the petitions, since the burden of proof to identify sources or groups of sources rests with the petitioners and not with EPA.

LETTERS: South Carolina Dept. of Health & Environmental Control (II-G-2)

RESPONSE: The section 126 remedy adopted by EPA does not cover sources beyond those named in the petitions, either specifically or as a source category.

The Agency notes that the opt-in provisions may allow certain other units to participate in the Part 97 trading program, but such sources are not required to participate as part of the section 126 remedy. See section II.C. of this preamble. Similarly, EPA notes that States in the SIP call region that choose to voluntarily participate in trading are not required to participate as part of the section 126. See section III.A.4. of this preamble.

SUMMARY: One commenter noted that inclusion of a State in the trading program that has no section 126 or 110 control requirements would endanger the trading system, and added that if included, these States should revise their SIPs and EPA should establish audit procedures to review the impact of their participation.

LETTERS: Pennsylvania Dept. of Environmental Protection (II-D-26)

RESPONSE: See section IV.A.4. of this preamble.

The EPA agrees with the commenter who stated that inclusion of a State in the trading program that has no control requirements could endanger the trading system. However, provided that specified criteria are met (including a SIP revision to adopt an EPA-approved and EPA-administered trading program that requires the emissions control levels under the NOx SIP call), the Agency believes that voluntary participation in trading by sources in certain States outside of the section 126 region could advance the objectives of the Federal NOx Budget Trading Program. Integration of trading under today's rule is limited to States affected by the section 126 and States affected by the NOx SIP Call. The EPA intends to conduct audits under the section 126 remedy.

SUMMARY: A number of commenters noted that EPA is not providing an adequate opportunity for comment on the elements or requirements of the trading program as they are expected to appear upon promulgation, because there are numerous issues for which EPA is currently taking comments. These commenters added that issues such as allocation methodologies, units covered under the trading program, inventory corrections, and new source set-asides, have the potential to significantly change the proposed rule.

LETTERS: Georgia Coalition for Sound Environmental Policy (A-98-12, III-D-57), Midland Cogeneration Venture Limited Partnership (A-98-12, III-D-56), (IV-D-84), South Carolina Dept. of Health and Environmental Control (A-98-12, III-D-82), Utility Air Regulatory Group (A-98-12, III-D-71), Virginia Dept of Environmental Quality (A-98-12, III-D-5), Virginia Power (VII-C-19) and (A-98-12, III-D-64), Wisconsin Dept. of Natural Resources (A-98-12, III-D-43)

RESPONSE: Since the Agency provided a sixty day comment period for the October 27, 1998 notice of proposed rulemaking on the section 126 trading program, the Agency rejects these comments as unfounded. In that notice, the Agency proposed a complete trading rule as Part 97. The preamble to the proposed rule included specific options for various provisions in Part 97 and solicited comments on those provisions. Section III.A.3. of the final preamble outlines what has changed in Part 97 between proposal and final rule. EPA notes that the provisions in proposed Part 97 were either the same as or similar to those in Part 96 under the NOx SIP call. The commenters had an opportunity to become familiar with these provisions in the context of the NOx SIP call, even before the comment period on the proposed Part 97.

SUMMARY: One commenter noted that the rate-based reduction programs in the non-affected source categories could lead to emission increases from these sectors. Growth exceedances in these sectors, which are not subject to the capped program, could be handled through retirement of allowances from the trading program.

LETTERS: New Hampshire Dept. of Environmental Services (A-98-12, III-D-42), (IV-D-36),

RESPONSE: For purposes of the Federal NOx Budget Trading Program under Part 97, this comment is irrelevant. The section 126 remedy covers only specific source categories, and only the reductions required for such sources are enforceable under the trading program.

SUMMARY: One commenter incorporated by reference their comments submitted in response to the NOx SIP call, which stated that EPA should not make data related to the trading system publicly available that are considered confidential by sources.

LETTERS: Southern Company (A-96-56, V-H-44 as incorporated by reference in IV-D-39)

RESPONSE: Data used for allocating allowances must be publicly available in order for all program participants and the public to understand and, where necessary, be able to appeal, the allocations. Emissions data for determining compliance must similarly be publicly available for public understanding and ability to appeal.

SUMMARY: One commenter incorporated by reference their comments submitted in response to the NOx SIP call, which urged EPA to clarify that the budgets are firm caps and not subject to upward increases over time.

LETTERS: PP&L, Inc. (A-96-56, IV-D-133 as incorporated by reference in IV-D-49)

RESPONSE: Under today's rule, the State trading program budgets are firm caps. The NOx caps will increase to account for any opt-in units since these units are allocated allowances and the cap must cover opt-in units' emissions.

SECTION III
RESPONSE TO COMMENTS ON THE REGULATORY ANALYSIS OF THE RULEMAKING

NOTE: EPA has already addressed these comments in the May 25, 1999 NFR, the April RTC, or in Section II..B.1 of this document.

SECTION IV
RESPONSE TO COMMENTS ON LEGAL ISSUES RELATED TO THE JUNE 24, 1999 NOTICE OF PROPOSED RULEMAKING

SECTION IV.A: Indefinite Stay of Technical Determinations Based on the 8-hour Standard

General Support

SUMMARY: Forcing a solution to a legal process based on a currently "unenforceable" standard is not prudent until the litigation is settled.
New Hampshire (VIII-C-08, pg. 1); Rhode Island Department of Environmental Management (RI DEM) (VIII-C-35, pg. 2)

RESPONSE: No response is necessary.

SUMMARY: The Missouri Department of Natural Resources supports EPA's proposal to indefinitely stay the technical determinations based on the 8-hour ozone standard pending further litigation developments. The D.C. Circuit's decision to remand the 8-hour standard has left EPA no other option but to separate the 1-hour and 8-hour findings that were made in the §126 notice of final rulemaking (NFR).
Missouri (VIII-C-20, pg. 1)

RESPONSE: No response is necessary.

SUMMARY: The Clean Energy Group (CEG) supports EPA's indefinite stay of the 8-hour ozone standard, pending the outcome of a rehearing. It is important to note that the absence of the 8-hour component will mean that fewer NOx reductions are achieved. As a result, additional states such as Wisconsin may find it necessary to submit their own §126 petitions in order to demonstrate attainment with the 1-hour standard.
CEG (VIII-C-23, pg. 2)

RESPONSE: No response is necessary.

SUMMARY: Illinois EPA agrees that EPA should stay its positive technical findings until such time as the 8-hour ozone standard is fully implemented and enforceable.
Illinois EPA (VIII-C-24, pg. 2)

RESPONSE: No response is necessary.

Supports Stay, but Better to Deny or Revoke 8-hour Findings

SUMMARY: One commenter notes that it is not appropriate to suspend indefinitely any §126 findings based on the 8-hour ozone standard; however, the commenter states that EPA should deny, not just suspend, all grants of petitions based on the 8-hour ozone standard since it is wrong to mandate states to make NOx reductions <u>before</u> states are legally required to submit ozone SIPs to address the new, but remanded, standard.
WVMA (VIII-C-04, pg. 1); AEP (VIII-C-15, pp. 1-2); Virginia Power (VIII-C-19, pg. 3); UARG (VIII-C-07, p.2–footnote)

RESPONSE: See the section 126 final rule, section II.D.

SUMMARY: The Midwest Ozone Group (MOG) supports EPA's decision to stay indefinitely the affirmative technical determinations based on the recently remanded 8-hour standard, pending further developments in the NAAQS litigation. It may be even more appropriate for EPA to withdraw entirely the technical determinations based on the 8-hour standard.
MOG (VIII-C-28, pg. 2)

RESPONSE: See the section 126 final rule, section II.D.

SUMMARY: In light of *American Trucking Association v. Environmental Protection Agency (ATA v. EPA)*, §126 petitions based on the 8-hour ozone standard should be denied.
CIBO (VIII-C-06, pp. 2-3)

RESPONSE: See the section 126 final rule section II.D.

SUMMARY: EPA's proposed action to indefinitely stay the 8-hour §126 findings is a "second best" response to the decision by the United States Court of Appeals for the District of Columbia (D.C. Circuit) in *ATA v. EPA* that EPA improperly promulgated the 8-hour ozone standard and that the standard is unenforceable in light of the language of the Clean Air Act (CAA). The preferred response to the D.C. Circuit decision would be to revoke the 8-hour findings.
UARG (VIII-C-07, pg. 4); Indianapolis Power & Light (IPL) (VIII-C-10, pg. 2)

RESPONSE: See the section 126 final rule section II.D.

SUMMARY: Per North Carolina's November 30, 1998 comments, application of the §126 petitions to the 8-hour standard is premature and inappropriate. In light of *ATA v. EPA*, any actions taken thus far on petitions relating to the 8-hour standard should be reversed. Instead of "decoupling" the 1-hour and 8-hour portions of the §126 petitions and placing a stay on technical determinations based on the 8-hour standard, EPA should deny the 8-hour portions of the petitions, and proceed solely on the basis of the finding of contributions under the 1-hour standard.
North Carolina Department of Environment and Natural Resources (NC DENR) (VIII-C-17, pp. 1-2)

RESPONSE: See the section 126 final rule, section II.D.

SUMMARY: It is appropriate to reject all the petitions with respect to the 8-hour ozone

standard, since neither upwind nor downwind states have had the opportunity yet to develop control strategies and to implement controls on their own that would be appropriate for addressing the recently remanded 8-hour standard.
West Virginia Division of Environmental Protection (WV DEP) (VIII-C-01, pg. 2)

RESPONSE: In general, EPA disagrees with this comment because the requirements under section 110(a)(2)(D)(i) and 126(b) are independent of requirements under Clean Air Act Title I, part D, subpart 2, applicable to nonattainment areas.

SUMMARY: City Utilities agrees with EPA's indefinite stay of the 8-hour standard; however, EPA should delete subsections (d), (e)(3) and (4), (f), and (h)(3) and (4) from 40 Code of Federal Regulations (CFR) section 52.34, rather than to add an additional subsection to section 52.34 stating that the findings are stayed. There is no reason to codify determinations that are contrary to existing law; those determinations should simply be deleted and abandoned. Leaving the unlawful findings in the CFR may lead others to conclude that EPA retains the authority to lift the stay, and resurrect the findings, by some informal action short of full notice-and-comment rulemaking.
City Utilities of Springfield, Missouri (VIII-C-25, pp. 1-2)

RESPONSE: See the section 126 final rule, section II.D. As EPA discusses in the preamble to the final rule, EPA would need to conduct a full notice-and-comment rulemaking to lift the stay of the affirmative technical determinations based on the 8-hour standard.

SECTION IV.B: Legal Authority for Using 8-hour Standard

SUMMARY: The 8-hour standard cannot be used to justify potential nonattainment impacts since 8-hour nonattainment areas do not exist.
Virginia Department of Environmental Quality (DEQ) (VIII-C-09, pg. 5); **VMA (VIII-C-27, pg. 3)**

RESPONSE: See NOx SIP Call NFR, 63 FR 57,356, 57,375 (Oct. 27, 1998).

SUMMARY: The new 8-hour standard cannot be used in evaluating the §126 petitions. The D.C. Circuit has remanded the 8-hour standard, and thus the technical merits that EPA based its final decisions on regarding the petitions are flawed. EPA must limit its reevaluation of the §126 petitions to the 1-hour ozone standard.
Virginia DEQ (VIII-C-09, pg. 5-6)

RESPONSE: See the section 126 final rule, section II.D.

SECTION IV.C: Stay All §126 Actions Pending Resolution of Litigation

SUMMARY: A number of commenters believe that EPA should stay all actions regarding the §126 petitions pending resolution of the NOx SIP call litigation.
Illinois EPA (VIII-C-24, pg. 1); Southeast Michigan Council of Governments (SEMCOG) (VIII-C-29, pg. 4); Michigan Department of Environmental Quality; (VIII-C-30, pg. 5); City of Detroit (VIII-C-34, pg. 1); AF&PA (VIII-C-14, pp. 6-7); AEP (VIII-C-15, pg. 1)

RESPONSE: See the section 126 final rule, section II.B.

SUMMARY: The multiple rulemakings on NOx emissions transport are inextricably intertwined; therefore, EPA cannot decide favorably on any portion of §126 petitions until the issues now being challenged in court are resolved. Any EPA determinations on §126 petitions that are made before the conclusion of the NOx SIP and NAAQS litigation would reflect the same deficiencies of those rules and be challenged on the same grounds as EPA's determinations in the NOx SIP call. The Council of Industrial Boiler Owners (CIBO) supports an indefinite stay of the §126 petition findings (including those filed by Delaware, Maryland, and New Jersey); however, this indefinite stay should apply, pending a final, unappealable decision in the NOx SIP Call and NAAQS litigation, to findings on the 1-hour standard only.
CIBO (VIII-C-06) pg. 1-2

RESPONSE: EPA agrees that some of the same issues that have come up in the NOx SIP call litigation are also being raised in litigation on the section 126 rule, although in a somewhat different context. If an eventual decision in the NOx SIP call litigation affects the legal basis for the section 126 rule, EPA will respond appropriately. In the meantime, EPA has a statutory obligation under section 126 to act on petitions from States within the specified timeframe. It is also reasonable for EPA to move forward with the section 126 rule, which is based on legal authority independent from the basis for the NOx SIP call. The reasonableness of EPA's position is confirmed by the recent order from the D.C. Circuit dated October 29, 1999, denying Petitioners' motion for a stay of the section 126 rule pending resolution of the litigation on that rule. The court found that the Petitioners had not satisfied the stringent standards required for a stay pending court review. As for the NAAQS litigation, EPA has stayed the portion of the section 126 rule based on the 8-hour standard at issue in the NAAQS litigation pending further developments in that litigation. EPA is not aware of any common issues between the NAAQS litigation and EPA's action under section 126 based on the 1-hour standard.

SUMMARY: EPA should not move forward on the §126 petitions until the current litigation over the NAAQS and the NOx SIP call have been resolved. If the NOx SIP call is ultimately upheld, then States in the OTAG region will again move forward with their NOx SIP submittals and there will be no reason for action on the section 126 petitions. In addition, proceeding with the §126 petitions could hinder or conflict with ongoing settlement discussions on the NOx SIP call. EPA should defer further action on the section 126 petitions and focus on working with states, regulated industry and the public to develop a proactive regional NOx control strategy.
Duquesne Light (VIII-C-13, pp. 2-3); IN DEM (VIII-C-36, pg. 2)

RESPONSE: See the response above. In addition, whether or not the NOx SIP call is upheld, EPA has an obligation to act on the section 126 petitions. EPA can take State actions pursuant to the NOx SIP call into account in making a finding as to whether sources contribute significantly to downwind nonattainment problems. However, State action under the NOx SIP call does not by itself satisfy the requirement for EPA to act on petitions under section 126. Furthermore, with respect to a future court decision upholding the NOx SIP call, the court or EPA would need to establish a new deadline for SIP submissions, and the delay from the original September 1999 deadline may require a shift in the date for achieving emissions reductions beyond May 2003. Thus, even assuming it is upheld by the court, the NOx SIP call might not produce the same quantity of emissions reductions within the same timeframe as the section 126 remedy.

Also, although there have been settlement discussions with a few specific petitioners with particular limited issues, there are no global settlement discussions on the NOx SIP call or section 126 rule ongoing at this time. EPA, the affected States, industry, environmental groups and other stakeholders have engaged in an extensive process through the Ozone Transport Assessment Group (OTAG) to develop a regional NOx control strategy. The OTAG recommendations formed the basis for the NOx SIP call and section 126 rules. EPA does not believe it would be productive in terms of addressing the interstate pollutant transport problem to delay regulatory action at this time. Moreover, section 126 requires EPA to grant or deny State petitions under section 126 within a specified timeframe.

SUMMARY: Both legal and public policy considerations warrant a stay of the §126 rule until the D.C. Circuit has decided the challenges to the NOx SIP call in *Michigan v. EPA*. The following reasons dictate this result: (1) given the inextricable linkages between the two programs, it is bad public policy to retain the §126 rule while the SIP call has been stayed; (2) the best reading of the statute is that EPA currently lacks the legal authority to impose the §126 rule; and (3) imposing the §126 rule when the SIP call has been stayed fundamentally undermines the federalist structure of the CAA. Because the rules remain inextricably linked, any court ruling affecting the SIP call necessarily also implicates the section 126 rule.
American Forest & Paper Association (AF&PA) (VIII-C-14, pp. 7-9); Cinergy (VIII-C-16, pp. 10-12)

RESPONSE: See the section 126 final rule, section II.B and other responses in this section. EPA notes that while there are some legal issues common to both the NOx SIP call litigation and litigation on the section 126 rule, there are others legal issues unique to one or the other rulemakings. Thus, a court decision on the NOx SIP call does not necessarily implicate the section 126 rule. Moreover, the possibility that a decision in *Michigan v. EPA* might affect the section 126 rule is not a sufficient basis for EPA to delay statutorily mandated action on the section 126 petitions.

SUMMARY: The best reading of Section 126 is that its provisions only apply if the state's SIP is determined to be inadequate with regard to pollutant transport. Here, however, there is a pending legal challenge over whether those SIPs are in fact inadequate. Moreover, in effect, the court has found that the SIPs will not be deemed inadequate until the court has had an opportunity to rule on the validity of the SIP call. As a result, the stay of the SIP call requires EPA to suspend the entirety of the section 126 final rule until the validity of the SIP call has been resolved. **American Forest & Paper Association (AF&PA) (VIII-C-14, pg. 8); Cinergy (VIII-C-16, pg. 11)**

RESPONSE: See the section 126 final rule, section II.B for a discussion of EPA's interpretation that a finding that a SIP is inadequate under section 110(k)(5) is not a prerequisite to a finding that sources are emitting in violation of the prohibition of section 110(a)(2)(D)(i) under section 126. To grant a petition under section 126, EPA need only find that sources in a state are contributing significantly to downwind nonattainment problems and that the applicable SIP does not already bar the sources from emitting at their current levels. For the purposes of making a finding under section 126, there is no requirement for EPA also to determine that the SIP is inadequate because it fails to bar the sources from emitting in amounts that will contribute significantly to downwind nonattainment problems. Thus, EPA's action under section 126 does not depend either on a finding that the SIPs for the States in which the sources are located are inadequate, or on the validity of the NOx SIP call (except to the extent that the NOx SIP call and the section 126 rule share a common technical and legal basis). In addition, the D.C. Circuit's rejection of petitioners' motion to stay the section 126 rule indicates that the court does not agree that the section 126 action should await a determination of the validity of the NOx SIP call, notwithstanding the court's stay of the deadlines for State submissions under the NOx SIP call.

SUMMARY: EPA's proposed revisions to the §126 rulemaking amount to nothing more than an inappropriate and legally unjustifiable effort to circumvent the D.C. Circuit's recent rulings invalidating the 8-hour ozone standard and staying the effectiveness of the NOx SIP call.
AF&PA (VIII-C-14, pp. 6-7); Cinergy (VIII-C-16, pp. 8-9); R. J. Reynolds Tobacco Company (VIII-C-18, pg. 2)

RESPONSE: See the section 126 final rule, section II.B and responses above.

SUMMARY: EPA should deny the §126 petitions, whether based on the 8-hour NAAQS or the 1-hour NAAQS. Short of this action, EPA should stay all further actions on any of the petitions, whether based on the 1-hour or the 8-hour NAAQS, until after the D.C. Circuit has resolved the pending judicial challenges to the new 8-hour ozone NAAQS, the NOx SIP call, and EPA's actions on the §126 petitions. The fate of EPA's NOx SIP call rule will unquestionably dictate the ultimate fate of EPA's §126 rule.
VMA (VIII-C-27, pp. 3-7)

RESPONSE: See the section 126 final rule, section II.B and responses above. EPA notes that while there are some legal issues common to both the NOx SIP call litigation and litigation on the section 126 rule, there are others legal issues unique to one or the other rulemakings. Thus, a court decision on one rule will not necessarily dictate the fate of the other.

SUMMARY: Commenters are concerned about the timing of this rulemaking, in that EPA intends to finalize this action well before the D.C. Circuit is likely to rule on the merits of the NOx SIP call litigation. The EPA should not attempt to circumvent the legal proceedings and impose its pre-determined mandate on the states. The flawed technical and legal assumptions underlying the NOx SIP call are also relied upon in the construction of the §126 rule.
SEMCOG (VIII-C-29, pg. 4); Michigan (VIII-C-30, pg. 5); City of Detroit (VIII-C-34, pg. 1)

RESPONSE: See the section 126 final rule, section II.B, and the responses to similar comments above.

SUMMARY: EPA has failed to address the fact that its §126 determinations are based upon many of the same technical and legal elements that are the subject of the NOx SIP call litigation and which will be subject to further rulings by the D.C. Circuit. Rather than "decouple" the two rulemakings, EPA should withdraw or at a minimum stay all actions on the §126 petitions pending resolution of the D.C. Circuit's review of the NOx SIP call.
NC DENR (VIII-C-17, pg. 4); RJ Reynolds (VIII-C-18, pp. 2-3); MOG (VIII-C-28, pg. 3)

RESPONSE: See the section 126 final rule, section II.B and responses above.

SUMMARY: The West Virginia Manufacturers Association (WVMA) requests that EPA expand indefinitely its temporary administrative stay of the section 126 rules, including any determinations on the §126 petitions of New Jersey, Maryland, and Delaware, until litigation of the underlying NAAQS, NOx SIP call rules, and the §126 rules are concluded to final, unappealable status.
WVMA (VIII-C-04, pg. 2, pg. 6)

RESPONSE: See the section 126 final rule, section II.B and responses above.

SUMMARY: EPA should defer making findings under section 126 because, as a result of staying the affirmative technical determinations based on the 8-hour standard, the remedy to what everyone recognizes as a broad regional problem would be dictated by which states chose to file section 126 petitions. **IN DEM (VIII-C-36, pg. 2)**

RESPONSE: EPA agrees that the scope of the remedy under section 126 depends upon the sources identified in the section 126 petitions and the effects of those sources on the particular downwind States that file petitions. Moreover, a broader region-wide solution, such as the NOx SIP call, is better suited to address the broad regional nature of the problem. However, the section 126 remedy will have substantial benefits for those States that chose to file petitions, and the commenter's points do not appear to justify delaying or denying relief for those States. There is even less justification for delay where the timing of a broader solution is uncertain, as here.

SECTION IV.D: "Decoupling" of the Section 126 and NOx SIP Call Rules/Removal of Trigger Mechanism

<u>*Supports EPA's "Decoupling" Proposal*</u>

SUMMARY: Commenters support EPA's proposal to "decouple" the timing of its actions on the §126 petitions from its action on the NOx SIP call.
Massachusetts (VIII-C-03, pp. 1-2); NY DEC (VIII-C-05, pg. 1); Missouri (VIII-C-20, pg. 1); CEG (VIII-C-23, pg. 2); Connecticut Department of Environmental Protection (CT DEP) (VIII-C-33, pg. 2); RI DEM (VIII-C-35, pg. 2)

RESPONSE: No response is necessary.

SUMMARY: New York argues that three significant differences demonstrate that §126 stands independent of §110. First, the scope of any §126 remedy and any §110 SIP call aimed at regional transport will be different. Second, a §126 finding and remedy can only apply to emissions from major stationary sources; a §110 SIP revision can address all types of sources. Third, §126(c) requires that a remedy be fully implemented within three years from the date of the initial finding, whereas the process of submitting a SIP provision, obtaining EPA approval, and fully implementing the requirements of a SIP revision can last considerably longer than three years.
New York Department of Environmental Conservation (NY DEC) (VIII-C-05, pp. 2-3)

RESPONSE: No response is necessary. However, EPA notes that the language of section 126 provides that the Administrator may make a finding for "any major source or group of stationary sources," while as the commenter notes, a section 110 SIP revision can address all types of sources.

SUMMARY: New Hampshire supports the "decoupling" of the link between the §126 process and the NOx SIP call. In fact, New Hampshire has always been opposed to the direct linking of the two processes in order to protect against having them both fall simultaneously vulnerable to litigation. However, New Hampshire and other petitioning States are still concerned that EPA proposes to deny petitions upon approval of State SIPs rather than on actual implementation of emission reductions.
New Hampshire (VIII-C-08, pg. 2)

RESPONSE: See May 25 NFR 28275-28276.

SUMMARY: While Michigan disagrees with the overall intent of this rulemaking, EPA's plan to uncouple the actions addressing the 1-hour ozone standard from those addressing the 8-hour standard is appropriate. The May 25 NFR attempted to circumvent the CAA by preemptively specifying sources and control levels for the new 8-hour NAAQS. The actions to be taken under §126 should never have been tied to actions required under the section 110 NOx SIP call. Separating the actions to be taken for the two different standards is reasonable and necessary.
Michigan (VIII-C-30, pg. 4)

RESPONSE: No response is necessary, although EPA does not agree that the May 25 NFR attempted to circumvent the CAA as the commenter alleges.

*Opposes EPA's "Decoupling" Proposal*

SUMMARY: Commenters oppose EPA's plan to "decouple" the 1-hour §126 findings from the SIP/FIP process. EPA's abandonment of its prior position to couple the dates of the §126 findings with the SIP/FIP process is arbitrary and capricious and goes against all its legal arguments given in the final §126 rule published on April 30, 1999. The principles articulated by EPA for the SIP/FIP/§126 linkage remain valid and contradict EPA's current decoupling proposal.
UARG (VIII-C-07, pp. 6-14); IPL (VIII-C-10, pg. 2); AEP (VIII-C-15, pg. 2); Virginia Power (VIII-C-19, pg. 3); Consumers Energy (VIII-C-21, pg. 2)

RESPONSE: See the section 126 final rule section II.B.

SUMMARY: EPA cannot "decouple" the findings under the 1-hour ozone standard from the rest of the §126 rulemaking. The D.C. Circuit's decision to issue a stay of the NOx SIP call did not change the law or give EPA license to repudiate its former legal theory about the appropriateness of allowing states to respond to §126 findings by first submitting SIPs which address such findings. EPA's proposed rulemaking appears to attempt to circumvent the court rulings on the 8-hour ozone standard and the NOx SIP call. EPA cannot decouple the rules until and unless there is a final determination by the D.C. Circuit as to the legitimacy of the underlying NAAQS, NOx rule, and EPA's authority under §126. **WVMA (VIII-C-04, pg. 2)**

RESPONSE: See the section 126 final rule section II.B.

SUMMARY: The effect of the decoupling strategy would be to allow EPA's federal NOx control strategy to preempt the SIP process, thus undermining the benefit that the D.C. Circuit's decision was intended to provide, i.e., to give states time to develop their own NOx control strategies in response to the SIP call and in light of the D.C. Circuit's decision on the merits of the challenges to the SIP call. In sum, EPA's proposed rule would subvert the implementation plan process. EPA should abandon its decoupling strategy and should instead change the §126 rule to provide that it will go into effect, if at all, only after completion of the SIP process.
UARG (VIII-C-07, pp. 12-15, pg. 25)

RESPONSE: See the section 126 final rule, section II.B.

SUMMARY: Although Virginia has held the position that the April 30 NFR improperly tied the §126 petitions to the NOx SIP call, EPA cannot suddenly change the position it took in the April 30, 1999 NFR and uncouple the two rules in order to circumvent the D.C. Circuit ruling to stay the NOx SIP call. Since the NOx SIP call has been delayed, the §126 petitions should be delayed as well.
Virginia DEQ (VIII-C-09, pp. 2-3)

RESPONSE: See the section 126 final rule, section II.B.

SUMMARY: It is inconsistent with the Act for EPA to find sources "in violation of the prohibition" of section 110(a)(2)(D)(i) when states are not yet required to submit SIP revisions to implement section 110(a)(2)(D)(i). EPA's own statutory interpretation of the interplay between section 110 and section 126 of the CAA contradicts its proposal to decouple the NOx SIP call and the section 126 rule. EPA stated that a source "is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit a quantity of emissions from that source or group of sources that EPA has determined contribute significantly to nonattainment" in a downwind State. EPA also states that "a State's compliance with the NOx SIP Call would eliminate the basis for a finding under section 126 for sources in that State." Since the very States within which sources have been named by the section 126 petitions are currently subject to a SIP call and the dates for submitting SIPs are still in the future, these States have not at this time failed to comply with the SIP call. Therefore, there is now no basis for a finding that any of these sources are in violation of the prohibition of section 110(a)(2)(D)(i).

UARG (VIII-C-07, pp. 14-16); Virginia Power (VIII-C-19, pg. 4)

RESPONSE: In the discussion in the May 25 NFR quoted above, EPA was explaining its interpretation that where a SIP barred sources in a State from emitting in quantities that contribute significantly to downwind nonattainment problems, but the sources were in violation of the SIP, it would not make sense for EPA to make a finding under section 126 with respect to those sources. There are other remedies available for sources' noncompliance with SIP requirements. See 64 FR 28273. EPA interprets the prohibition of section 110(a)(2)(D)(i) as a prohibition on emission of a quantity of pollutants that would contribute significantly to nonattainment in or interfere with maintenance by another state. See 64 FR 28272. In essence, it is a prohibition on excessive interstate transport of air pollutants. Id. The state is responsible for implementing the prohibition by barring such excessive emissions in the SIP, and in evaluating a section 126 petition, EPA would consider whether the emissions identified were barred under the applicable SIP. Nevertheless, section 126 applies directly to sources, not states, and if the SIP did not bar such emissions, under section 126 EPA must control the emissions from the sources directly. Section 126 does not require or even appear to contemplate that EPA should issue a SIP call to require a State to regulate the sources, rather than requiring the sources to reduce emissions under the explicit provisions in section 126(c). Thus, the fact that there is a SIP call to require States to control the excessive emissions, especially without any deadline for States or sources to comply, does not undercut the mandate in section 126 for EPA to require sources to reduce emissions. The absence of any SIP provisions barring the excessive emissions and of any explicit and expeditious deadline for States to adopt such provisions only reinforces the need for EPA to act under section 126. See the section 126 final rule section II.B for further discussion.

SUMMARY: WVMA specifically disagrees with EPA's conclusion that delaying action under §126 would subordinate §126 to §110. To the contrary, WVMA believes that the CAA requires any action under §126 be implemented through the SIP process only. Section 126 does not serve as an independent vehicle for imposition of direct reduction requirements on sources by EPA except in the case of default or refusal by a state to address legitimate transport impacts.
WVMA (VIII-C-04, pg. 5)

RESPONSE: See the section 126 final rule, section II.B; 64 FR 28263-28267, 28271-28274.

SUMMARY: CIBO opposes EPA's proposal to "decouple" its original linkage of the time-frames for the NOx SIP call and the §126 petitions. As a petitioner in the NOx SIP litigation, CIBO is incredulous that EPA could take the approach that the *ATA v. EPA* decision and ongoing litigation in the NOx SIP call are superfluous to EPA's disposition of §126 petitions, which are based on the same facts.
CIBO (VIII-C-06, pg. 3)

RESPONSE: See the section 126 final rule, section II.B, and responses to comments above in section IV.C. Moreover, EPA has not taken the position that the *ATA* decision and the litigation in the NOx SIP call are superfluous to EPA's disposition of the section 126 petitions. To the contrary, EPA has temporarily stayed the section 126 rule and conducted an additional notice-and-comment rulemaking specifically to address issues for the section 126 rulemaking raised by those cases.

SUMMARY: Rather than make final its decoupling proposal, EPA should revise its existing §126 rule to provide that §126 findings will not go into effect until after (1) SIP submissions are required to be submitted under the NOx SIP call rule and (2) a reasonable period for EPA review and approval or disapproval of those submissions has passed.
UARG (VIII-C-07, pg. 7)

RESPONSE: See the section 126 final rule, section II.B.

SUMMARY: According to one commenter, results of a study conducted by TRC Environmental Corporation in March 1999 indicate that the New England States can attain the 1-hour ozone standard by 2003 through Title IV NOx reductions, OTC MOU NOx reductions, and motor vehicle I/M controls. Accordingly, the commenter believes EPA should abandon its decoupling strategy and revise the §126 rule to provide that the rule only go into effect, if at all, after completion of the SIP revision process.
IPL (VIII-C-10, pg. 3)

RESPONSE: A response to the TRC study can be found in the April RTC in section III.B.9. After the response was written, the 1-hour ozone standard was revoked for several New England nonattainment areas. The remaining 1-hour nonattainment areas in the eight petitioning States are Philadelphia, New York City, Greater Connecticut, and Western Massachusetts. The upwind 126 States contribute significantly to these nonattainment areas and the nonattainment areas still need upwind ozone reductions in order to attain the 1-hour standard. The attainment status of the other New England areas does not change the fact that upwind states have significant contributions to the remaining nonattainment areas, and does not relieve the upwind States of their responsibility to mitigate their significant contributions to those areas.

SUMMARY: EPA's proposal to "decouple" the §126 program, which was designed to be a “backstop” to the NOx SIP call, from the NOx SIP call is not valid. The §126 petition responses remain integrally linked to the NOx SIP call, and in spite of EPA’s claims, the minor changes that EPA has proposed to make to the section 126 final rule, are not sufficient to sever the fundamental interrelationship between the two programs.
AF&PA (VIII-C-14, pg. 2-4); Cinergy (VIII-C-16, pg. 1, pp. 3-8)

RESPONSE: See the section 126 final rule, section II.B.

SUMMARY: The fact that EPA has refused to modify several critical aspects of the May 25, 1999 final rule belies EPA’s claim that it is truly “decoupling” the §126 petition responses from the NOx SIP call. Specifically, EPA is retaining the same technical basis for its §126 findings, retaining the SIP call compliance trigger as the only method for avoiding imposition of the §126 rule requirements, and retaining both the timing and the stringency of controls that EPA had planned to require under the SIP call. As such, it is not credible to claim that the proposed rule will “decouple” the §126 petition responses from the NOx SIP call.
AF&PA (VIII-C-14, pg. 4); Cinergy (VIII-C-16, pg. 1, pp. 3-8)

RESPONSE: EPA is “decoupling” the section 126 rule from the NOx SIP call in that EPA is making findings under section 126 without linking the findings to a State's failure to comply with the NOx SIP call. Both the NOx SIP call and section 126 are based on a violation of the same provision, section 110(a)(2)(D)(i). Thus, it makes sense for EPA to use a consistent technical basis for both rules and to require similar, although not identical, remedies in terms of the quantity and timing of needed emissions reductions. See the section 126 final rule, section II.B for a discussion of EPA's retention of the provision for withdrawal of a section 126 finding upon approval of a SIP that complies with the NOx SIP call as promulgated.

SUMMARY: It is not credible to claim that the proposed rule will "decouple" the Section 126 petition responses from the NOx SIP call given that EPA is retaining the same technical basis for the two rulemakings. EPA's basis for granting the section 126 petitions is the SIP call's supporting rationale, and EPA finds that there has been a violation of Section 126 because of the state's failure to comply with the SIP call.
Cinergy (VIII-C-16, pg. 1, pp. 3-8)

RESPONSE: EPA did not base its affirmative technical determinations in the May 25 NFR or the findings in the final section 126 rule on a State's failure to comply with the NOx SIP call. Rather, EPA made determinations as to whether sources in a State were emitting NOx in quantities that contribute significantly to downwind nonattainment problems. EPA structured the May 25 NFR to account for the fact that the same States containing sources that would be controlled under a section 126 action were also subject to the NOx SIP call, and such States' compliance with the SIP call would address the significant contribution targetted under section 126. Deferring making findings under section 126 to allow States an opportunity to avoid section 126 findings does not mean the basis for findings would have been a State's failure to take advantage of that opportunity. The basis for granting the section 126 petitions is the finding that the sources in a State significantly contribute to downwind nonattainment problems. See also the response above and the section 126 final rule, section II.B.

SUMMARY: RJ Reynolds disagrees with EPA's proposal to delink the §126 and NOx SIP call rulemakings for several reasons. First, the NOx SIP call stay was issued to allow further review of the technical and legal rationale for issuing the NOx SIP call. The same rationale is applicable to the findings EPA would make under §126. Second, removing the link would effectively take away the opportunity for the affected states to address NOx emissions. Third, removing the link between the two rules effectively bypasses the judicial process, since implementing §126 would require the same measures as the NOx SIP call.
RJ Reynolds (VIII-C-18, pg. 2)

RESPONSE: See the section 126 final rule, section II.B. Also, the D.C. Circuit did not explain the basis for its grant of the motion to stay the deadlines for SIP submissions under the NOx SIP call, and the D.C. Circuit recently rejected a motion to stay the section 126 rule pending completion of the litigation on that rule.

SUMMARY: EPA's proposed rule is inappropriate and would subvert the SIP process. EPA is proposing to usurp the responsibility of implementing control plans from the states, imposing direct federal controls in absence of a SIP call that the states are not yet required to address.
Consumers Energy (VIII-C-21, pg. 1)

RESPONSE: <u>See</u> the section 126 final rule, section II.B.

SUMMARY: By using the section 126 petitions to force States to prepare SIPs complying with the NOx SIP call or else lose control over the criteria pollutant planning and regulatory process within their states, EPA appears to be undermining the Constitution's separation of powers by seeking to negate administratively the court's ruling on its actions. **AF&PA (VIII-C-14, pg. 9); Cinergy (VIII-C-16, pg. 11)**

RESPONSE: <u>See</u> the section 126 final rule, section II.B and other responses in this section in which EPA explains that the section 126 rule does not pressure States to comply with the NOx SIP call so as to circumvent or undermine the court's stay of the NOx SIP call SIP submission deadline.

SUMMARY: Given the inherent linkage between the NOx SIP call and the section 126 rule, it is simply not legitimate for EPA to reverse their order of application, by applying the backstop section 126 petition process to replace the stayed SIP call upon which the petition process was based. **Cinergy (VIII-C-16, pg. 12)**

RESPONSE: <u>See</u> the section 126 final rule, section II.B for a discussion of how EPA interprets and applies section 110(a)(2)(D) and section 126 as two independent statutory provisions.

SUMMARY: It is uncertain whether comments objecting to EPA's "decoupling" proposal will receive fair consideration as required by administrative law. Statements made by Carol Browner, EPA Administrator on June 14, 1999 and in a letter to the governors of the petitioning states show that EPA will "decouple" the rules "so that we can proceed toward our mutual goals unimpeded" indicate that EPA cannot give full and fair consideration to comments opposing EPA's "decoupling" proposal. EPA has abandoned even a public pretense at open-mindedness on the decoupling issue. The Administrator's comments demonstrate that EPA has presented the public with a *fait accompli*, not a true proposal with a meaningful opportunity to comment as required by law.
UARG (VIII-C-07, pg. 25); AEP (VIII-C-15, pg. 1); Virginia Power (VIII-C-19, pg. 6); MOG (VIII-C-28, pg. 4)

RESPONSE: EPA has given full and fair consideration to the numerous comments supporting and opposing EPA's proposal to decouple the section 126 rule and the NOx SIP call. See the section 126 final rule, section II.B. for a detailed explanation of EPA's reasons for promulgating a final rule, based on the proposal to decouple the rules. Administrative law requires an administrative agency to provide for a public process to comment on a proposed course of action and for the agency to take the comments into consideration in making a final decision. EPA has done this, and has explained at length why it disagrees with the commenters that oppose this course of action.

SUMMARY: According to one commenter, EPA is attempting to impose the exact same controls for which the legal underpinnings have been removed as a result of the D.C. Circuit's decisions in *American Trucking Associations* and *Michigan v. EPA*. This is demonstrated by Administrator Browner's description of the purpose of the proposed modifications to the section

126 rule in a letter to the Northeast states. She stated: “[i]n so doing, we will separate the clean air petitions from these recent court decisions so that we can proceed toward our mutual goals unimpeded.” **Cinergy (VIII-C-16, pg. 6, pp. 8-9)**

RESPONSE: To the contrary, EPA is modifying the May 25 NFR precisely to account for the D.C. Circuit’s rulings in those two cases. EPA is staying indefinitely all aspects of the section 126 determinations based on the 8-hour standard. This has resulted in a significant reduction in the number of sources covered by the section 126 remedy. Moreover, EPA is making findings based on the 1-hour standard without reference to a State’s submission of a SIP revision under the NOx SIP call. The court’s stay of the deadlines for SIP submissions under the NOx SIP call in no way removed the legal underpinnings for action on the section 126 petitions. Finally, Administrator Browner’s letter to the Northeast States identified the purpose of staying the entire May 25 NFR and proposing to modify the rule as <u>responding</u> to the court’s decisions. EPA’s action recognizes that it would not be appropriate for the section 126 findings to be triggered by a State’s failure to comply with a requirement now stayed by the court, and by removing that trigger mechanism, EPA is addressing that concern. Similarly, the section 126 final rule will impose the section 126 remedy on sources based solely on the 1-hour, and not the 8-hour, standard. Administrator Browner’s letter recognized that both the Northeast States and EPA are concerned about downwind nonattainment problems stemming from interstate transport of pollutants, and that for EPA to respond to the States’ petitions regarding this issue under section 126, EPA would need to modify the final rule to properly address the effects of the court’s recent decisions. See also the section 126 final rule, section II.B.

SUMMARY: One commenter, a utility, expressed concern that EPA’s proposal to decouple the §126 and SIP call processes and the Agency’s insistence on a May 1, 2003 compliance deadline under §126 could cause undue harm to the commenter’s operation and other affected sources. The commenter added that, at this time, the States within which this utility operates are all still subject to the requirements of the NOx SIP call. Under the provisions of the SIP call, each of these States has full authority to develop its own implementation plan to meet the required in-State NOx reductions. Such a plan may involve reductions from other source sectors in addition to electric generating units and large industrial sources, which could in effect lessen the burden on the utility’s sources. Under EPA’s new section 126 proposal, the commenter believes that the May 2003 compliance date will require the utility to embark on a compliance strategy that could be different from a compliance strategy under the SIP call. In effect, the commenter noted that it could be forced to commit to costly expenditures to meet EPA-imposed controls (under section 126) before knowing whether the individual States within which it operates have exercised their authorized discretion to control different or other sources in addition to the Section 126-targeted sources. According to the commenter, this approach is not reasonable. The commenter further asserts that this very issue of avoiding unnecessary and burdensome competing control strategies was raised by EPA itself in defending its initial approach in linking the section 126 and NOx SIP call rules. **Virginia Power (VIII-C-19, pg. 5)**

This commenter and others believe that EPA should continue to allow the SIP call process to move forward and the States to develop their implementation plans before taking any action under section 126. **(Virginia Power (VIII-C-19, pg. 5); UARG, VIII-C-07, p. 7; IPL, VIII-C-10, p. 3; RJ Reynolds, VIII-C-18, p. 2; WVMA, VIII-C-04, p. 5)**

RESPONSE: <u>See</u> the section 126 final rule, section II.B. In addition, the scenario raised by the commenter depends on a number of factors that may or may not be present in any particular situation. The commenter assumes that the NOx SIP call is upheld, a State chooses to comply with the NOx SIP call by regulating section 126 sources less stringently than under the section 126 remedy, the State's SIP is adequate to substitute for the section 126 remedy, the sources subject to the State's less stringent restrictions have already made substantial irreversible investments to comply with the section 126 requirements, and neither the States nor the sources have taken this possibility into account in their decisionmaking so as to allow the sources to benefit from the less stringent requirements by reducing operating costs, selling allowances, or some other means. EPA does not believe that this possible, but by no means certain, scenario justifies delay of statutorily mandated action under section 126.

<u>Oppose Retention of Provision to Withdraw 126 Finding Upon 110 SIP Approval</u>

SUMMARY: EPA's proposal continues to improperly link EPA's actions on §126 petitions with upwind states' compliance with §110(a)(2)(D). Nothing in §126 allows EPA to deny a §126 petition based on a state's commitment, in the form of a SIP revision, to control emissions of sources within its borders. It is important that §126 findings against an upwind state not be withdrawn until the emissions reductions specified in the NOx SIP call are actually implemented in that state.
Massachusetts (VIII-C-03, pg. 2); NY DEC (VIII-C-05, pg. 1 and pg. 3); New Hampshire (VIII-C-08, pg. 2); CT DEP (VIII-C-33, pg. 2); RI DEM (VIII-C-35, pg. 2)

RESPONSE: <u>See</u> the section 126 final rule, section II.B, May 25 NFR 28275-28276.

SUMMARY: Maintaining the provision that allows states to adopt SIP provisions complying with the NOx SIP call on a voluntary basis only gives states the Hobson's choice of either doing what they have been relieved of doing by the D.C. Circuit or handing over their jurisdiction to EPA.
WVMA (VIII-C-04, pg. 5)

RESPONSE: <u>See</u> the section 126 final rule, section II.B.

SUMMARY: EPA's retention of the automatic trigger revoking §126 findings for states that voluntarily comply with the SIP call puts pressure on states to comply with the SIP call on the original schedule, despite the D.C. Circuit's stay of that schedule.
AF&PA (VIII-C-14, pp. 6-7)

RESPONSE: <u>See</u> the section 126 final rule, section II.B.

SUMMARY: EPA maintains the linkage between the two rules by observing that if a state were to voluntarily file a conforming SIP under §110 with a compliance date of May 1, 2003, then EPA would deem the §126 finding withdrawn as it applies to that state.
AEP (VIII-C-15, pg. 2)

RESPONSE: See the section 126 final rule, section II.B.

SUMMARY: EPA's proposed approach would improperly encourage states to impose SIP call controls on natural gas-fired internal combustion engines used by the natural gas industry, even though no petitioning state requested such controls under §126, because EPA proposed to retain the provision revoking a section 126 finding for sources in a State for which EPA has approved a SIP submission complying with the NOx SIP call as promulgated. This is both illegal and indefensible as policy.
INGAA (VIII-C-22, pg. 1, pp. 4-5)

RESPONSE: See the section 126 final rule, section II.B for discussion of EPA's retention of the provision withdrawing a section 126 finding for sources in a State upon EPA's approval of a SIP revision for such State that complies with the NOx SIP call as promulgated. Retention of this provision does not impermissibly pressure States to comply with the NOx SIP call, as explained in the preamble. In addition, the NOx SIP call does not require or pressure States to achieve the specified quantity of emissions reductions in any particular manner, such as requiring reductions from IC engines. The NOx SIP call NFR emphasized that each State has full discretion to choose any set of controls that would assure the necessary reductions. 63 FR 57,378 (Oct. 27, 1998).

SUMMARY: EPA should revise its proposed rule to provide that EPA will not implement any element of §126 relief it has granted to the extent the relevant state agrees to implement that element itself. EPA should *not* condition any such deferral to a state on the state's agreement to impose and enforce measures beyond those addressed in the §126 decision.
INGAA (VIII-C-22, pg. 5)

RESPONSE: EPA has not yet addressed, or needed to address, the question raised by the commenter: Under what circumstances should a State be able to preempt an element of the federal remedy under section 126 by implementing that element itself? The section 126 rule provides that where a State submits and EPA approves a SIP revision complying with the NOx SIP call, including the compliance date for sources of May 2003, the section 126 finding for sources in that State will automatically be withdrawn. Yet the fact that EPA included a specific provision to coordinate the concurrent requirements under section 126 and the NOx SIP call does not indicate that EPA would necessarily reject another approach by a State, including the approach suggested by the commenter, as insufficient to satisfy the requirements of section 126. As noted in the section 126 final rule, section II..B, EPA also has not addressed in this rule the effect on the section 126 remedy for sources in a State that submitted a SIP in compliance with the NOx SIP call as modified pursuant to the litigation, e.g., with a later compliance date for sources. EPA believed it was necessary and appropriate to determine the effect of a State submission complying with the NOx SIP call on a section 126 finding. EPA had required States to make such submissions, and, given the broader scope of the emissions reductions required under the NOx SIP call to meet the same section 110(a)(2)(D)(i) requirement, compliance with the NOx SIP call should clearly address the interstate pollution problem targetted by section 126. If and when a State indicates to EPA that it intends to implement an element of the federal section 126 remedy itself, EPA would then determine the effect of such a State action on the section 126 findings. EPA would need to consider at that time, in light of the actual State proposal, such potentially relevant factors as the timing, requirements, sources covered, and whether the State action satifies the purposes of section 126.

SECTION IV.E: Extension of the Interim Final Stay

Supports Extension

SUMMARY: Although it does not agree with the underlying rule, WVMA would not object to the extension of the interim final stay of the May 25 NFR past November 30, 1999, provided EPA recognize that the timing of this rule as well as the related rulemaking activities and court actions dictate that a compliance date of May 1, 2003 is no longer realistic. EPA must take into account the time needed for compliance with any final rule in connection with the stay and adjust the implementation date accordingly.
WVMA (VIII-C-04, pg. 4)

RESPONSE: As discussed elsewhere, EPA believes that three years is an adequate period for sources to comply with the section 126 remedy. See May 25 NFR, pp. 28302-28303. Thus, at a minimum, it would not be necessary for EPA to adjust the compliance date of May 1, 2003, so long as EPA did not finalize the section 126 rule until a date after May 1, 2000.

SUMMARY: Commenters do not oppose an extension of the interim final stay past November 30, 1999; however, the §126 findings should be stayed not only until EPA completes its current rulemaking but until after states must submit SIP revisions and EPA has had a reasonable period of time to determine whether those revisions are approvable.
UARG (VIII-C-07, footnote #2); Virginia Power (VIII-C-19, pg. 5)

RESPONSE: <u>See</u> the section 126 final rule, section II.B.

Opposes Extension

SUMMARY: The New Hampshire Department of Environmental Services is concerned about EPA's proposal to possibly extend the interim final stay past November 30, 1999. An extension may increase the likelihood of delay, as opposed to reducing the likelihood of delay as EPA suggests. New Hampshire believes that a date well before May 1, 2003 is "as expeditious as possible" and that the 3-year time frame should be considered a maximum.
New Hampshire (VIII-C-08, pg. 2)

RESPONSE: While EPA has in fact extended the interim final stay past November 30, 1999, this extension is limited to a few months and has not resulted in any change to the compliance date of May 1, 2003.

SECTION IV.F: Miscellaneous Legal Issues

SUMMARY: One commenter believes that EPA should reject all of the §126 petitions in areas

where the 1-hour standard has been revoked and where the petition was based solely on nonattainment of the 1-hour ozone standard. According to the commenter, those areas will obviously be able to achieve attainment of the 1-hour standard through nothing more than the imposition of existing CAA controls.
WV DEP (VIII-C-01, pg. 1)

RESPONSE: The EPA agrees that an area that is not attaining the 1-hour standard, but with respect to which EPA has determined that the 1-hour NAAQS no longer applies, may no longer be considered a receptor for purposes of EPA approval of the State's section 126 petition. It should be noted, however, that EPA has proposed to reinstate the 1-hour NAAQS. If this proposal is finalized, then such an area may again be considered a receptor.

SUMMARY: One commenter questions EPA's decision to retain the prior 1-hour ozone standard for only certain areas in the country while proclaiming it nonexistent for the rest of the country. According to the commenter, this results from the fact that EPA improperly retained the 1-hour only for certain areas in the country–the Northeast, most of California, and a few urban areas in the Midwest and Southeast–resulting in a patchwork since most of the country attains the 1-hour standard. The commenter states that the effect is a wholly unauthorized two-tier system of ozone standards, with different values, and regulatory requirements, applying to different parts of the country, due to the fact that while the 1-hour standard applies in certain ozone nonattainment areas, neighboring areas that previously met the 1-hour standard are now subject to the 8-hour, but not the 1-hour standard. This regulatory construct, according to the commenter, is contrary to the mandate of §109 of the CAA to establish NAAQS and contrary to EPA's prior interpretations of that section..... EPA's true purpose in the limited retention of the 1-hour ozone standard was to justify the NOx SIP call and its related §126 petitions, since the new 8-hour ozone standard could not supply the legal basis for the call.
WVMA (VIII-C-04, footnote #1)

RESPONSE: This comment generally concerns EPA's authority to retain the 1-hour NAAQS for a period of time following promulgation of the 8-hour NAAQS. As such, this comment is beyond the scope of today's rulemaking action. EPA disagrees with the commenter's assertion concerning EPA's purpose in retaining the 1-hour NAAQS. In addition, EPA believes that the 8-hour NAAQS could supply the basis for the NOx SIP Call and the section 126 actions, for reasons explained in those rulemakings.

SUMMARY: The commenter noted that in response to the NOx SIP call, the state of North Carolina observed that EPA interpreted the term "nonattainment" in section 110(a)(2)(D)(i)(I) in a manner that authorized control obligations on upwind sources before downwind receptor areas were designated nonattainment; and the State commented that EPA's proposed interpretation and application of section 110(a)(2)(D) preempts North Carolina's technical planning for developing a sound comprehensive strategy to meet requirements of the new 8-hour NAAQS.
RJ Reynolds (VIII-C-18, pg. 2)

RESPONSE: EPA believes that its interpretation of the term "nonattainment" in section 110(a)(2)(D)(i)(I) is, from a legal standpoint, wholly separate from any action an upwind State may take to implement the new 8-hour NAAQS.

SECTION V
MISCELLANEOUS RESPONSES TO COMMENTS

SECTION V.A: Timing and Level of Controls

SUMMARY: One commenter believes that EPA should reassess the May 1, 2003 compliance date because the recent court rulings have resulted in the instability of the underlying NOx SIP call.
MOG (VIII-C-28, pg. 11)

RESPONSE: EPA believes that the Court rulings on the NAAQS and the stay of the compliance schedule for the NOx SIP call do not preclude the Agency from continuing to proceed with section 126 findings based on the 1-hour standard. The Agency does not believe it is appropriate to defer action on the section 126 petitions pending resolution of the NOx SIP call litigation, and the court recently denied a motion for a stay of the rulemaking.

SUMMARY: One commenter notes there is nothing in the statute that requires emission reductions by May 2003 to alleviate significant contribution. Given that the court has allowed the states additional time to develop SIPs under the NOx SIP call, which may well delay a May 1, 2003 compliance date, there is no compelling reason for EPA to abandon the linkage between the NOx SIP call and the section 126 rule in order to retain the May 1, 2003 compliance date.
Virginia Power (VIII-C-19, pg. 4)

RESPONSE: <u>See</u> the section 126 final rule, section II.B.

<u>Need to Reconsider Level of Controls</u>

SUMMARY: Several commenters believe that a less stringent level of NOx control under the §126 rulemaking may be needed to address 1-hour impacts given the Court's ruling on the 8-hour standard and the improvements in air quality that have occurred in the Northeast over the past several years.
AF&PA (VIII-C-14, pp. 9-11); Cinergy (VIII-C-16, pp. 12-14); Virginia Power (VIII-C-19, p. 3)

RESPONSE: As indicated in the May 25, 1999 NFR (64 FR 28,280), emissions from all upwind sources for which EPA made an affirmative technical determination, affect air quality in at least one downwind, one-hour nonattainment area that is modeled to continue to experience nonattainment even after sources in the downwind area implement all controls required under the CAA. This residual nonattainment problem makes clear that upwind sources that contribute even relatively small amounts (in an absolute sense) to those ozone levels should be considered to be part of the problem and, therefore, part of the solution. EPA responded to other points the commenters made elsewhere in this rulemaking. See, e.g., 64 FR 28,291-92 (air quality trends).
SUMMARY: Several commenters indicate that EPA claims to be revising the basis for controls from the new 8-hour ozone standard to the old 1-hour ozone standard; however, according to the commenters, the level of control being sought for Michigan apparently has not changed. The

commenters believe that, if the level of control is not modified, the purpose of this proposed rulemaking amounts to a distinction without a difference. According to the commenters, EPA's actions are obviously driven by policy considerations, rather than air quality impacts. The commenters contend that EPA's definition of "significant contribution" based on highly cost-effective control availability is so loose that EPA can conclude that virtually all transport is significant. According to the commenters, this definition allows EPA to change the goal and the scope of its action without changing the emissions cap to be imposed on upwind sources.
SEMCOG (VIII-C-29, pg. 2); Michigan (VIII-C-30, pg. 2); City of Detroit (VIII-C-34, pg. 1)

Similarly, other commenters object that EPA's proposal, even though it would now be based solely on the 1-hour ozone standard, makes no change in the rulemaking as to the level of control that was to be imposed previously under both the 8-hour and 1-hour ozone standards. The deep reductions being insisted upon under the 8-hour standard cannot be justified solely under the 1-hour standard.
WVMA (VIII-C-04, pp. 2-3); Virginia Power (VIII-C-19, pg. 3); VMA (VIII-C-27, pg. 7)

RESPONSE: The May 25, 1999 NFR explains EPA's basis for determining significant contribution and establishing the control level under the one-hour NAAQS. This basis is not changed by the recent developments concerning the 8-hour NAAQS. EPA does not consider all transport to be "significant;" for example, EPA has denied Pennsylvania's petition under the one-hour NAAQS with respect to Michigan sources. 64 FR 28,294. Eliminating the 8-hour NAAQS from the basis for the rulemaking does create a difference because it eliminates the basis for including sources in certain upwind States in today's action. Id.

Other

SUMMARY: Two commenters stated that refocusing the section 126 responses on the 1-hour ozone standard will result in some sources being arbitrarily penalized while others , i.e., those contributing to downwind nonattainment under the 8-hour ozone standard, would not be regulated since EPA took action to indefinitely stay the technical determinations based on the 8-hour standard. The commenters stated that sources in some States will be subject to substantial control requirements while others remain untouched, even though EPA believes that the sources contribute equally to ozone transport and downwind nonattainment for both the 1-hour and 8-hour standards. **AF&PA (VIII-C-14, pg. 11); Cinergy (VIII-C-16, pg. 18)**

RESPONSE: Under section 126, Congress gave the petitioning State the authority to identify the sources and source categories that they believe are significantly contributing to nonattainment or maintenance problems in the petitioning State. Any State may submit a petition. The Clean Air Act requires EPA to take action on any petition that is submitted and sets expeditious deadlines by which EPA must do so. In making findings under section 126, which would trigger the control requirements, EPA is limited to the universe of sources named in a particular petition. Further, EPA is limited to evaluating the interstate transport with respect to the 1-hour and/or 8-hour standard as specifically requested in the petition. Due to a ruling by the D.C Circuit Court of Appeals regarding the 8-hour ozone standard, EPA cannot move forward to require section 126 controls with respect to that standard, at this time. The EPA's comprehensive and preferred approach for addressing ozone transport in the eastern half of the United States is provided in the

NOx SIP call. However, that rule has been stayed by the D.C. Circuit Court of Appeals.

SECTION V.B: Analytical Approach for Evaluating Significant Contribution

Definition of Significant Contribution

SUMMARY: While EPA has amended the May 25 NFR, one commenter believes that it has failed to address the implications of the non-delegation doctrine on its interpretation of significant contribution. According to the commenter, EPA has a shifting definition of "significant contribution" that produces inconsistent and illogical results. The commenter believes that, as EPA has not sufficiently articulated an intelligible principle to ensure that any policy judgments that EPA has made in the rule reflect the judgment of Congress as expressed in the CAA, the rule must be rewritten, not stayed. The commenter adds that EPA did not explain why it stopped where it did in determining which ambient impacts were significant. The commenter contends that EPA used one definition of significant contribution in determining "linkages" between upwind and downwind states, and a different definition in determining what remedy to impose. The commenter requests that EPA explain why it has used two meanings for the same term. The commenter adds that EPA erred in relying on cost-effectiveness per ton of NOx removed, rather than per ppb of ozone removed.
NC DENR (VIII-C-17, pp. 4-5)

RESPONSE: EPA believes its definition of "contribute significantly" is consistent, and the commenter has not provided specific support for its argument that the definition shifts. Further, EPA used the same definition in determining the linkages and in determining the remedy. That is, as part of the multi-factor definition for "contribute significantly," upwind sources whose emissions (in conjunction with other emissions in the upwind State) contribute at least certain amounts of ozone downwind, and at least a portion of whose emissions may be eliminated through highly cost-effective controls, should be considered to contribute significantly. The remedy consists of requiring control levels that would eliminate the portion of emissions that may be eliminated through such highly cost-effective controls.

EPA responded to similar concerns with respect to cost-effectivness in the May 25 NFR, Section II.B.2 (64 FR 28284-28285, May 25, 1999); and the April RTC document, Section II.B.1 (pp. 17-20, April 1999). EPA disagrees with the commenter. The following response is generally taken from the brief filed by the Department of Justice in the NOx SIP Call case, Michigan v. EPA.

In the NOx SIP Call rulemaking, EPA indicated how it applied its weight-of-evidence approach to each upwind-downwind link. For the NOx SIP Call proposal, EPA used a weight of evidence analysis that included factors such as downwind air quality, State-specific emissions data, OTAG subregional transport modeling, and other information. See generally 63 FR at 57,381-83; 62 FR at 60,335-40; RTC 147-49 (JA 712-14). EPA summarized the contributions from each subregion in terms of both the frequency and magnitude of the downwind impacts over specified concentration ranges. 63 FR at 57,383; see also 62 FR at 60,385-415. After reviewing these data, EPA determined, inter alia, that all of the States wholly contained within OTAG subregions 1 through 9, and six of the nine States partially contained in those subregions, contribute significantly to downwind nonattainment. 62 FR at 60,339.[2]

In response to comments on the proposal, EPA conducted State-specific CAMx and UAM-V air quality modeling, and developed metrics (i.e., measurements for various parameters) from the data produced. See supra 19-22; see generally 63 FR at 57,389-91; TSD 16-23, 29-31 (JA 1067-74, 1080-82). Using these metrics, EPA first examined the data for each upwind/downwind linkage with reference to two numerical screening criteria (one based on an OTAG convention), and eliminated from further consideration those linkages for which the contributions were very low. 63 FR at 57,391; TSD 30 (JA 1081).[3] EPA then carefully reviewed the additional modeling data to make well-reasoned, case-specific determinations as to which of the remaining linkages were significant. 63 FR at 57,390-91; TSD 30-31 (JA 1080-81).[4] EPA found linkages that passed the initial screening to be significant if there were high values for at least two of the three principal metrics (magnitude, frequency, and relative amount of contributions) for both UAM-V and CAMx, id.., and the Agency documented all of its findings in

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[2] In addition, Massachusetts and Rhode Island were proposed for inclusion in the SIP Call based on emissions data and trajectory and wind vector analyses. 62 FR at 60,339.

[3] These screening criteria were: (1) a maximum contribution of less than 2 ppb ozone from either UAM-V or CAMx modeling; and/or (2) a four episode average percent contribution of less than one percent ozone due to manmade emissions, based on CAMx modeling. OTAG had selected 2 ppb as a minimum value in evaluating its modeling results. NOx SIP Call TSD 30 & n.11.

[4] The analysis described in the text was conducted for all States for which State-specific modeling was performed. State-specific UAM-V modeling was performed for most, but not all, of the 23 States, and CAMx modeling was conducted jointly for some smaller States. NOx SIP Call TSD 19, 21. The findings for States not covered by the State-specific UAM-V modeling were confirmed based on consideration of the CAMx modeling. See generally 63 FR at 57,398.

the record.[5] Notably, few of these findings are challenged specifically in this proceeding.[6]

As described in the Section 126 NFR, 64 Fed. Reg. 28277-90, EPA based its analysis in the Section 126 NFR on the above-described analysis in the NOx SIP Call rulemaking.

Nor does EPA's approach violate the nondelegation doctrine. Discussion of this issue here must begin with the court's recent decision in American Trucking Ass'ns, Inc. v. EPA, 175 F.3d 1027 (D.C. Cir. 1999), which, inter alia, remanded EPA's ozone NAAQS revision in part because of nondelegation concerns. Although EPA disagrees with this decision in a number of material respects, EPA's significant contribution analysis in the Section 126 NFR easily passes constitutional muster even under the majority's approach in American Trucking.

The nondelegation doctrine arises from Article I, Section 1 of the Constitution, which provides that "all legislative powers herein granted shall be vested in a Congress of the United States." U.S. Const., art. 1, § 1. Congress, however, is not precluded from delegating its legislative power to another branch, so long as it provides "an intelligible principle to which the person or body [authorized to act] is to conform . . . ." J.W. Hampton Jr. & Co. v. United States, 276 U.S. 394, 409 (1928). The majority's analysis in American Trucking looked to the Agency to supply this "intelligible principle," ideally in the form of a cost/benefit analysis or other "determinate standard."[7]

In the Section 126 NFR, both the statute and the final rule articulate "intelligible

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[5] Ultimately, most of the linkages that passed the initial screening also were found to be significant through this further analysis of the metrics, although some were not. See, e.g., NOx SIP Call TSD 33 n.14 (citing two examples). The preamble and the TSD discuss New York City's nonattainment problem in some detail to exemplify the Agency's overall approach, 63 FR at 57,392-94, NOx SIP Call TSD 32-41, and also summarize the data supporting significant contribution findings for other selected linkages. See 63 FR at 57,396-98; NOx SIP Call TSD 46-57. EPA also offered narrative explanations of the data supporting each significant linkage, see NOx SIP Call TSD App. C (1-hour upwind/downwind linkages) ; App. D (8-hour linkages), as well as explanations of the data indicating linkages that were not significant. NOx SIP Call TSD App. C, pp. C-20 to C-23, App. D, pp. D-44 to D-49. All of the metrics for the CAMx and UAM-V modeling were also set forth in the record. NOx SIP Call TSD Apps. E-K.

[6] Aside from the relatively discrete geographical coverage challenges presented with regard to the States of Missouri, Wisconsin, Georgia, and South Carolina, which we address separately below, Petitioners do not contend that any particular upwind State was improperly included in the SIP Call.

[7] American Trucking (suggesting that cost/benefit analysis is one acceptable "intelligible principle," but noting cases precluding consideration of costs in setting NAAQS); see also International Union v. OSHA, 37 F.3d 665, 669-70 (D.C. Cir. 1994) ("Lockout/Tagout II") (noting that although agency did not conduct a formal cost/benefit analysis, nondelegation requirement in part satisfied by agency's finding that there was a reasonable relationship between costs and benefits).

principles" that satisfy the nondelegation doctrine. In Mistretta v. United States, 488 U.S. 361, 372-73 (1989), the Supreme Court stated that a delegation is "constitutionally sufficient if Congress clearly delineates the general policy, the public agency which is to apply it, and the boundaries of this delegated authority." (Citation omitted.) Here, the statute sets forth a clear general policy, i.e., the prevention of "any . . . emissions activity within [a] State . . . which will . . . contribute significantly to nonattainment in, or interfere with maintenance [of the NAAQS] by, any other State . . . ." 42 U.S.C. § 7410(a)(2)(D). While the statute does not set forth specific criteria for EPA to consider, the bounds of EPA's authority to implement this policy are amply defined for nondelegation purposes.

For example, the term "contribute significantly" itself creates meaningful bounds.[8] At one end, use of the term "contribute" makes clear that upwind emissions do not have to be the sole cause of a downwind nonattainment or maintenance problem to be subject to control. On the other hand, the contribution must be "significant" – i.e., control of the emission must at least help ameliorate the downwind pollution problem being addressed. See 63 FR at 57,374, 57,404.

The legislative history also provides additional meaningful guidance on Congress' intended application of section 110(a)(2)(D). While Congress' priority was to promote real and effective improvement in the control of interstate air pollution problems, it also made clear that it intended action under this provision to address economic inequities among the States "with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own State." 3 1977 Legis. Hist. (Library of Congress) 1416.

This guidance provides a more than ample basis for the Court "to ascertain whether the will of Congress has been obeyed." Mistretta, 488 U.S. at 379 (citation omitted). Indeed, as the American Trucking dissent points out, far broader delegations of authority have routinely been upheld by the Supreme Court and this Court.[9] Further, where, as here, judicial review under the APA is available for the challenged action, this is another limiting factor that weighs strongly in favor of the validity of the delegation.[10]

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[8] In prior cases considering EPA significant contribution determinations under the CAA, this Court has upheld EPA's findings without suggesting any nondelegation concerns. See New York v. EPA, 852 F.2d 574 (D.C. Cir. 1988); National Asphalt Pavement Ass'n v. Train, 539 F.2d 775 (D.C. Cir. 1976).

[9] See also, e.g., Lichter v. United States, 334 U.S. 742, 778-86 (1948) (recovery of "excessive profits" on military contracts); Yakus v. United States, 321 U.S. 414, 420 (1944) (setting of "fair and equitable" commodities prices); FPC v. Hope Natural Gas Co., 320 U.S. 591, 600-01 (1944) (determination of "just and reasonable" rate); NBC v. United States, 319 U.S. 190, 225-26 (1943) (regulation of broadcasting in the "public interest"); Milk Indus. Found. v. Glickman, 132 F.3d 1467,1475 (D.C. Cir. 1998) (delegation to approve interstate compacts upon a finding of "compelling public interest).

[10] American Power & Light Co. v. SEC, 329 U.S. 90, 104-05 (1946); Skinner v. Mid-America Pipeline Co., 490 U.S. 212, 218 (1989); Touby v. United States, 500 U.S. 160, 170 (1991) (Marshall, J., concurring); Milk Indus., 132 F.3d at 1475; United States v. Garfinkel, 29

EPA's application of these principles meets the standards articulated in American Trucking. EPA's approach ultimately reflects a reasoned balancing of air quality benefits with the cost-effectiveness of required emissions reductions – precisely the type of balancing identified as sufficiently "determinate" by the Court. Indeed, EPA's application of the significant contribution standard is better defined, and more constrained, than was the OSHA standard upheld in Lockout/Tagout II, a case heavily relied on by the American Trucking Court.

Both Lockout/Tagout II and this case involve a "significance" inquiry. In Lockout/Tagout II, OSHA found that once it had identified a "significant" safety risk, it had to "enact a safety standard that provides 'a high degree of worker protection.'" 37 F.3d at 669. The Court found this "enough to satisfy the demands of the nondelegation doctrine." Id. In this case, after identifying upwind States with emissions that "significantly" contribute to downwind nonattainment, EPA then defined the amount of emissions to be eliminated as those for which highly cost-effective controls are available, and then undertook further analysis to assure that these controls secured appropriate air quality benefits and equitably distributed the burdens of the SIP Call among all upwind States. This approach is, at the very least, as "determinate" as the standard upheld in Lockout/Tagout II.

SECTION V.C: Air Quality Assessment

Reduced Geographic Scope

SUMMARY: One commenter indicates that EPA has not addressed the fact that its "air quality assessment" for the final §126 rule is even less valid given the exclusion from the rule's coverage of seven states and parts of four other states as a result of the stay of the 8-hour ozone findings. Whereas EPA had relied on 23-state modeling from the NOx SIP call rulemaking to support its assertion that the 126 rule would produce significant reductions in ozone concentrations in the petitioning states, the commenter stated that the §126 region now only incorporates nine whole states and parts of four others.
UARG (VIII-C-07, pp. 5-6)

RESPONSE: EPA still believes that the NOx SIP call final rule modeling can be used as a proxy for the ozone benefits expected from the final Section 126 rule. The final 126 rule made determinations that 9 States and parts of 4 others significantly contribute to 1-hour nonattainment in New York, Connecticut, Pennsylvania, and Massachusetts. Section 126 findings under the 1-hour standard were made for all of the upwind States that were found to contribute significantly to NY, PA, CT, and MA in the NOx SIP call[11]. All of the NOx SIP call States that don't

F.3d 451, 458 (8th Cir. 1994); see also A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 532-33 (1935) (distinguishing cases upholding broad delegations because, e.g., statutes provided notice and hearing procedures).

[11]The exception is the impact of Illinois, Western Indiana, and Northern Michigan on New York and the impact of Northern New York on Connecticut and Massachusetts. EPA found the entire States of Illinois, Michigan, and Indiana to be significantly impacting New York in the NOx SIP call, and the entire State of New York to be impacting Connecticut and Massachusetts. But New York, Connecticut, and Massachusetts did not

contribute significantly to the petitioning States are not included in the 126 rule.

The vast majority of the resulting ozone benefits in the four petitioning States would be expected to come from the States that significantly contribute to those States. In fact, the EPA CAMx modeling shows that 84% of the upwind transport to New York City and 94% of the upwind transport to Western Massachusetts is attributable to the States contained in the final 126 rule. EPA expects that the ozone benefits in the petitioning States due to the final 126 rule would be equal to a similar percentage (84% to 94%) of the NOx SIP call ozone benefits. Therefore, the final 126 rule is expected to show significant reductions in ozone concentrations in the petitioning States.

Additionally, EPA is modeling the final 126 strategy with the latest inventory and will document the ozone benefits of the final 126 rule in the RIA.

Significance of Individual States

SUMMARY: Indianapolis Power and Light comment that its generating stations would not be affected by §126 findings since they are located in an area identified in EPA's final rule as Subregion 5 that appears to be affected by only Pennsylvania's 8-hour ozone standard petition. **IPL (VIII-C-10, pg. 2)**

RESPONSE: The final 126 rule found that 9 States and parts of 4 other States significantly contribute to 1-hour nonattainment in the petitioning States. The 4 partial States are Michigan, Indiana, Kentucky, and New York. The 126 findings under the 1-hour standard do not apply to any emissions sources located outside of the 9 States and parts of the 4 States. Any emissions sources owned by the commenter that are located within a partial State, but not within the section 126 significant contribution area of that State, are not subject to the control requirements contained in the final 126 rule.

SECTION V.D: Comment Period

Extension of the Comment Period

SUMMARY: Several commentors stated that the comment period on the June 24, 1999, proposed rulemaking should be extended. **WV DEP (VIII-C-01, pg. 1), NC DENR (VIII-C-02, pg. 1)**

RESPONSE: The public comment period on the proposed rule originally ended on August 9, 1999. On August 16, 1999 (64 FR 44452), EPA reopened the comment period until August 25, 1999, in response to public comments on the proposal.

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include Illinois, Western Indiana, Northern Michigan, and Northern New York in their respective 126 petitions. Therefore, even though EPA found those States and portions of States to significantly impact the petitioning States in the NOx SIP call, they were not included in the final 126 rule. SIP call level controls in those areas would provide additional ozone benefits to the petitioning States.

Reopening of the Comment Period

SUMMARY: Commenters requested that EPA reopen the comment period on the entire section 126 rulemaking and for specific issues in light of the D.C.Circuit's decision to stay the compliance deadline for the SIP call and the decision on the 8-hour NAAQS. These include: (1) the overall validity of the §126 responses in light of the recent D.C. Circuit decisions; (2) given the greater stringency of the 8-hour standard relative to the 1-hour standard, a less stringent level of control should be needed to address the 1-hour impacts; (3) how to "decouple" the §126 petition responses from the SIP call (i.e., EPA must consider the timing and level of controls if the two actions are de-linked, and it must remove not only the SIP call noncompliance trigger for imposition of section 126 controls, but it must also remove the SIP call compliance trigger for revocation of section 126 controls); and (4) the fact that EPA's decision to stay the 8-hour findings reduces the number of states affected from nineteen to twelve.

RESPONSE: Irrespective of the D.C. Circuit Court's decisions on the SIP submission deadline for the NOx SIP call and the remand of the 8-hour NAAQS, EPA is continuing to rely on the same technical basis for its actions on the eight petitions. The Court decisions do not preclude EPA from proceeding with its rulemaking, nor do their decisions undermine the technical basis for the timing and level of reductions needed to mitigate what the eight Northeastern States describe as significant transport of NOx. The Agency sees no compelling reasons provided by the commenters to reopen the comment period. EPA has addressed the issues of timing and level of controls and the reduced geographic coverage in Sections V.A and V.C of this document.
Cinergy (VIII-C-16, pp. 19-20); Virginia Power (VIII-C-19, pg. 3)

SECTION V.E: Other Comments

Availability of Key Information

SUMMARY: Several commenters express concern that throughout the regulatory process information has been made available to the public in a piecemeal manner that has made it difficult to analyze each proposed rulemaking. For example, the commenters note that EPA does not plan to finalize the federal NOx budget trading program until November 30, 1999, which does not provide affected parties an opportunity to comment on the control level that the Agency will determine is necessary to reduce emissions causing violations of the 1-hour standard in downwind States. In addition, the commenters state that emission inventory information has been in a constant state of flux and that modeling has been revised frequently. According to the commenters, these changes to the technical basis of the EPA's actions have often been made after the agency closed the period for comment.
SEMCOG (VIII-C-29, pg. 4); Michigan (VIII-C-30, pg. 4); City of Detroit (VIII-C-34, p.1)

RESPONSE: EPA believes that throughout the rulemaking process for the section 126 petitions it has made information available to the public in a timely manner. EPA did delay the promulgation of the Federal NOx Budget Trading Program by approximately 4 months (July to November 1999) because of the need to conduct additional proposed rulemaking (64 FR 33956, June 24, 1999) to address the impact of the court decisions earlier this year on the section 126 rulemaking.

As to the commenters' concerns regarding the changes to the emissions inventory, EPA believes it has given the public substantial opportunity to comment on the original NOx statewide emissions budgets published in the final NOx SIP call on October 27, 1998 (63 FR 57356), and on the technical amendment to the NOx SIP call (64 FR 26298, May 14, 1999). Primarily in response to public comment on emissions inventory revisions to 2007 baseline information used to establish each State's budget, EPA has recently revised the NOx statewide emissions budgets for the 22 States and the District of Columbia which are required to submit SIP revisions to address regional ozone transport. EPA also solicited comment for purposes of revising the NOx statewide emissions budgets for sources expected to be covered by the section 126 rulemaking because the section 126 proposal relied on the same emissions inventory information as the NOx SIP call. Some revisions were made based on comments received after the comment periods but deemed to be technically justified.

The final NOx SIP call provided the opportunity for comments on 2007 baseline sub-inventory revisions. If data submitted by commenters were determined to be technically justified, the State baseline inventory and budgets for the NOx SIP call would be revised to include the new data. In response to the comments received during this comment period, revised baseline inventories and budgets were published in the May 14, 1999 technical amendment.

EPA is taking final action on a second technical amendment based on further comments received from the public in response to the NOx SIP call and the request for comments on inventory revisions as well as the May 14, 1999 technical amendment. To the extent the Administrative Procedure Act might require publication of an additional notice of proposed rulemaking for this action, EPA found good cause to dispense with such a proposal. EPA found it would be contrary to the public interest, because a number of States are proceeding with revisions to their SIPs that are dependent upon finalization of these inventories. Any delay in finalizing these inventories would require States to delay submitting their SIP revisions and therefore could delay emissions reductions that would be realized as a result of these SIP revisions. Furthermore, EPA has already provided a sufficient opportunity for public comment on the inventory issues (5 U.S.C. 553(b)(B)) through the prior comment period on the SIP call and the first technical amendment.

The commenters also suggest that EPA's "frequent" changes in the modeling have made it difficult for the public to adequately review and comment on the technical basis for the section 126 rulemaking, and that these changes have been made after the close of the comment period. EPA made available electronically all model input and output data at the time of proposal of the section 126 rulemaking (Administrator's signature on September 24, 1998), or earlier in the docket for the NOx SIP call (docket number A-96-56). EPA also made data available at the time of the final rulemaking (Administrator's signature on April 30, 1999). All findings for purposes of the section 126 petitions and all significance determinations for purposes of the NOx SIP call are based on a single set of model runs. The only new modeling (U-runs) which EPA referenced as part of the April 30 final rule (Docket Number A-97-43, VI-D-23) was not used for any technical determinations; the original modeling for determining significant contribution for the section 126 petitions and the NOx SIP call has not changed.

EPA docketed the technical support document for Air Quality Modeling (docket number A-96-56, VI-B-11), which describes the modeling and contains tabulations of all the metrics EPA used to evaluate significant contribution for the various upwind-downwind linkages. EPA also responded to comments on the modeling in a response to comments document (April 1999, docket number, A-97-43, VI-C-01). EPA also developed in early 1999 a new website ("Regional Transport of Ozone (RTO)"(www.epa.gov/ttn/rto) to make it easier for the public to obtain documents related to the rulemakings for the section 126 petitions, NOx SIP call, and Federal Implementation Plans.

SECTION VI
RESPONSES TO COMMENTS OUTSIDE THE SCOPE OF THE JUNE 24, 1999 NOTICE OF PROPOSED RULEMAKING

EPA received numerous comments that the Agency considered to be outside the scope of the June 24, 1999 proposal. These comments relate primarily to issues that have been addressed and decided previously either in the NOx SIP call NFR, the NOx SIP call RTC document, the May 25, 1999 NFR for the section 126 petitions, or the April 1999 RTC document for the section 126 petitions. Individual comments are summarized in this section, as well as cross-referenced to previous response(s) for the reader's convenience. EPA's previous responses, however, are not necessarily limited to the specific section(s) cited. The comments in this section relate to timing and level of controls for reducing NOx emissions, compliance, new sources, EPA's analytical approach for evaluating significant contribution, OTAG modeling and analysis, EPA's air quality assessment, and other legal and administrative concerns.

EPA is responding separately to certain comments received on the June 24, 1999 proposal which the Agency believes should be considered to be, in effect, petitions for reconsideration of the May 25, 1999 final rule.

SECTION VI.A: Timing and Level of Controls

SUMMARY: Regarding the May 1, 2003, compliance date, EPA's reference to the section 126(c) "as expeditiously as practicable" language misses the point. The relevant question is when should one "start" the period during which compliance is deemed practicable? The only approach that is compatible with the Act is to start that period only after the states either have had to complete, under the NOx SIP call, decisionmaking about which sources must meet NOx controls and how stringent each affected source's NOx controls will be, or have defaulted on their SIP call obligation.
UARG (VIII-C-07, pp. 16-17)

RESPONSE: Section 126 provides clear deadlines for EPA action on petitions under section 126 and for sources to reduce emissions. Section 126(b) requires EPA to make a finding or deny a petition within 60 days after receipt of the petition. Section 126(c) requires sources for which EPA has made a finding to shut down three months after the date of the finding. EPA may permit a source to continue to operate beyond that three month period, but only if the source complies with "emission limitations and compliance schedules" provided by EPA "to bring about compliance" with section 110(a)(2)(D)(i) "as expeditiously as practicable, but in no case later than three years after the date of such finding." Section 126 makes no reference to a SIP call under section 110(k)(5) as a prerequisite to making findings under section 126. Given the situation where EPA had already promulgated a SIP call with explicit and expeditious deadlines for compliance, EPA believed it was reasonable to briefly defer making findings under section 126 to allow States an opportunity to comply with the SIP call, as explained in detail in the May 25 NFR and the section 126 final rule. 64 FR 28271-28276. Commenters are suggesting here, however, that EPA delay making findings under section 126 for some indeterminate time, possibly years, until the court issues a decision in the litigation on the NOx SIP call, there are new deadlines for States to comply with the SIP call, and States have failed to meet those deadlines. Under this approach, it is very likely that sources would not be required to reduce emissions by May 1, 2003, which EPA has already determined would be "as expeditiously as practicable." EPA is not aware of any basis in the statute for commenters' suggested approach of delaying the "start" of the period for determining when compliance is practicable, and commenters do not point to any such provision. See the section 126 final rule, section II.B for further discussion.

SUMMARY: There is no legitimate reason for EPA to persist in treating as sacrosanct the May 1, 2003 compliance date, as demonstrated by the NOx SIP call rule's regulatory history. In proposing the NOx SIP call rule, EPA had a detailed statutory analysis supporting a compliance date of September 2004, which would require sources to meet emission limits beginning in the 2005 ozone season. EPA explained that under this approach all of the upwind controls would be in place as of the November 15, 2005 attainment date for the downwind severe-15 areas. EPA also referred to the availability of two one-year extensions of ozone attainment dates under section 181(a)(5), and noted that implementation of reductions by September 2004 may allow a downwind area to be eligible for the 1-year extensions and reach attainment by 2007. Any ineligibility for an extension would not be the fault of upwind states because they would have already made their emission reductions. While EPA rejected the September 2004 date in the final NOx SIP call rule, EPA did not repudiate the section 181(a)(5) analysis. Thus, some delay in making the findings to continue coordination with the SIP process would be fully compatible with EPA's linkage rationale in the May 25 NFR and the section 181(a)(5) analysis.
UARG (VIII-C-07, pp. 18-20)

RESPONSE: See the response above for a discussion of the CAA deadlines for action by EPA and sources under section 126. In addition, EPA notes that the deadlines in section 126 reflect Congress' purposes in enacting section 126. Section 126 provides downwind States a means of requiring sources in upwind States to reduce the emissions that are transported to the downwind States and cause pollution problems there. Furthermore, the timeframes specified and the requirement to reduce emissions as expeditiously as practicable indicate Congress' concern that downwind States filing section 126 petitions reap the benefits of reduced interstate transport in a timely manner. The possibility that nonattainment areas that fail to meet their attainment deadlines may be able to extend those deadlines does not reduce the importance of achieving cleaner air in those areas. An extension of the attainment deadline does nothing to provide the people living in a nonattainment area the year or more of health benefits they would have enjoyed with timely emissions reductions and, as a result, air quality that meets the national standards. While EPA discussed the possibility of a 2004 compliance deadline and attainment date extensions in the NOx SIP call proposal, in the final NOx SIP call EPA rejected a 2004 compliance deadline and concluded that the May 2003 compliance date is appropriate. 63 FR 57449.

This conclusion is further bolstered by EPA's recent proposal to approve the 1-hour attainment demonstration for the Springfield, Massachusetts nonattainment area. Springfield was classified as a serious area with a statutory attainment date of 1999, but was unable to attain by that date. The 1-hour attainment demonstration for Springfield indicates that the area's attainment will depend on achieving out-of-state emissions reductions. EPA has proposed to extend the attainment date for Springfield to the earliest practicable date for achieving the upwind reductions Springfield needs for attainment. Because the upwind reductions Springfield needs can practicably be achieved by 2003, EPA has proposed to grant an extension of Springfield's attainment date to that year. Hence, Springfield's ability to meet the proposed attainment deadline would depend upon sources in upwind States reducing emissions by the start of the effective ozone season in 2003.

SUMMARY: One State believes that the §126 petition schedule is unreasonable based on its previous comments submitted on the NOx SIP call.
Virginia DEQ (VIII-C-09, pg. 3)

RESPONSE: See Section I.D of the NOx SIP call NFR, p.57361-62; and Section V.A, pp. 57447-57450.

SUMMARY: One commenter believes that EPA should reassess the May 1, 2003 compliance date because (1) the Northeast States continue to be in noncompliance with the Clean Air Act; and (2) meeting the compliance date is impracticable.
MOG (VIII-C-28, pg. 11)

RESPONSE: EPA has previously responded to the commenter's remarks in the NOx SIP call NFR, Section II.A(j), p. 57380; and in the May 25 NFR, Section II.E, pp. 28290-91 and Section II.K, p. 28302-04. See also the April RTC document, pp. 153-158.

SUMMARY: Several commenters believe that the NOx reductions sought by the petitioners are not necessary to address Michigan's contribution to ozone problems in downwind states. SEMCOG and Michigan indicated they have already submitted to EPA detailed comments and technical analysis which they believe demonstrates that this level of control in Michigan is unnecessary and will not produce the purported benefits.
SEMCOG (VIII-C-29, pg. 1); Michigan (VIII-C-30, pg. 1); City of Detroit (VIII-C-34, pg. 1)

RESPONSE: See NOx SIP Call RTC document, pp. 114-115; and the April RTC document, Sections III.A.2 and III.A.4, pp. 56-60.

SUMMARY: According to several commenters, EPA's attempt to apply a uniform level of NOx control on utilities and other large stationary sources has been a tangled web of misapplication of legal authority and inadequate technical analysis.
SEMCOG (VIII-C-29, pg. 1); Michigan (VIII-C-30, pg. 1); City of Detroit (VIII-C-34, pg. 1)

RESPONSE: See NOx SIP Call NFR, Section III. F.1, p. 57423.

SUMMARY: One commenter indicates that all petitioning States should be required to implement the same level of controls that are requested of upwind states. Initially, according to the commenter, the Ozone Transport Region memorandum of understanding (OTR MOU), which establishes phased reductions within the OTR, is less stringent than the NOx SIP call requirements EPA has proposed for most States east of the Mississippi. The commenter adds

that not all of the OTR States are listed in the NOx SIP call, therefore, early on in the process, OTR States not subject to the NOx SIP call will have less stringent requirements than States outside of the OTR. The commenter believes that, due to deregulation of the utility industry, this could be the most critical time for sources to determine market share and would be economically unfair. According to the commenter, mandated regulatory burdens for all identified States outside of the OTR to address nonattainment problems within the OTR region where some of those States are not required to meet the same requirements is not only inappropriate, but it is technically indefensible. The commenter states that Maine, New Hampshire and Vermont are noticeably absent. Does EPA expect the public to believe that existing source and potential new source emissions from these States do not impact each other; do not contribute "significantly" to nonattainment problems, either with the 1-hour standard or with the 8-hour standard? If attainment is not a concern for these States, why did they submit the petitions in the first place?
Virginia DEQ (VIII-C-09, pp. 7)

RESPONSE: See April RTC, Section III.C.3, p. 82, and III.A.5, p. 60.

SUMMARY: One commenter believes that a 60% reduction or 0.17 lb/mmBtu emission rate for industrial boilers is not necessary to prevent "significant contributions" to nonattainment.
AF&PA (VIII-C-14 , pg. 11)

RESPONSE: See NOx SIP Call RTC, Section V.B.3, p. 190.

SUMMARY: In a previous letter, one commenter believes the level of control to be imposed on industrial boilers is neither appropriate nor justified. The commenter indicates that Forest product mill industrial boilers are fundamentally different from utility boilers and there are few available, cost-effective NOx reduction options. Furthermore, according to the commenter, SCR and SNCR are not economically or technically feasible. Therefore, the commenter concludes that cost-effectiveness and technological feasibility of add-on NOx controls should be determined on a case-by-case basis considering equipment and process constraints on individual combustion units.
AF&PA (VIII-C-14, pp. 12-15)

RESPONSE: See April RTC, Section VI.B, pp. 134-135.

SUMMARY: Missouri supports the control levels put forth by OTAG. Although EPA's proposed control level might be an appropriate target in the future, Missouri thinks EPA should conduct additional modeling to demonstrate the needed control level. In a comment letter dated June 25, 1999 [sic., 1998], Missouri proposed an alternative control strategy for the NOx SIP call, and it stands by this proposal as a more reasonable control strategy.
Missouri (VIII-C-20, pg. 2)

RESPONSE: See NOx SIP Call RTC, Section II-A, pp. 64-65, for response to comment on the need for additional modeling to support controlling coarse grid areas. The June 25, 1998 letter describes the concept of a phased approach for control of NOx emissions which other States and interested parties have also discussed. The EPA's response to comments on phase-in of control strategies is found in the NOx SIP Call RTC document, Section IV-A, p. 161.

SUMMARY: Several commenters restated previous comments that the level of control in Michigan (or any other state) should be based on the state's contribution to ozone nonattainment in another state. The commenters indicated that the Governor of Michigan, along with governors from several other states, has submitted a proposal to EPA *("Governors' Proposals")* designed to provide substantial reduction of NOx emissions. According to the commenters, technical analysis confirms that the level of control in that proposal is more than adequate to address Michigan's contribution to transport. In fact, Michigan is in the process of adopting a rule that will make these reductions (0.25 lbs/mmBtu or 65% from 1990 levels) legally enforceable. **SEMCOG (VIII-C-29, pp. 1-2); Michigan (VIII-C-30, pp. 1-2); City of Detroit (VIII-C-34, pg. 1)**; **Consumers Energy (VIII-C-21, pg. 2)**

RESPONSE: EPA has already addressed the concerns of these commenters and others regarding the alternative proposals submitted by various States and other parties. See April RTC, Section VI.A, pp. 122-123; and NOx SIP Call RTC, Section VII, pp. 213-216. The commenters did not provide any specific information for EPA to assess the NOx reduction rule which they indicate Michigan is in the process of implementing. EPA is responding separately to Michigan's analysis of its contribution to ozone contribution in petitioning States, which the Agency believes should be considered to be, in effect, a petition for reconsideration of the May 25, 1999 final rule.

SECTION VI.B: Analytical Approach and Air Quality Assessment Issues

Analytical Approach for Evaluating Significant Contribution

SUMMARY: Commenters questioned EPA's method for determining significant contribution. For example, one commenter stated that EPA's rules have made no distinction as to the location of a given source and its targeted reduction obligations, and thus some sources have been targeted unfairly. As an example, a small, gas-fired boiler, used by the DuPont-Belle Plant located in the East end of the greater Kanawha Valley, is factored in the budget to make just as much NOx reduction (60%) as a large**,** coal-fired boiler located hundreds of miles away in the Northeast. According to the commenter, EPA did not take such facts into account, and simply looked at the design heat input capacity of the unit, and the kind of fuel it uses, and assumed that the small boiler is a significant contributor.
WVMA (VIII-C-04, pg. 4)

RESPONSE: See April RTC, section III.A.2, p. 56; and NOx SIP Call RTC, section I.C., p. 17.

SUMMARY: One commenter stated that EPA has not provided any technical analysis demonstrating that specific sources identified by the petitioners and by EPA in the May 25, 1999 NFR are significant contributors to downwind nonattainment for either the 1- or 8-hour standards.
Virginia Power (VIII-C-19, p. 3)

RESPONSE: See May 25 NFR, pp. 28282-83.

SUMMARY: Virginia Department of Environmental Quality **(VIII-C-09, p. 9)** provided the following comments on EPA's modeling activities:

SUMMARY: (1) Zeroing-out all man-made emissions from a State is inappropriate.
RESPONSE: See NOx SIP Call RTC, section III.E.3, p.150; and the April RTC, section III.B.1.b,
p. 62

SUMMARY: (2) The source apportionment technique used in EPA's CAMx modeling may not be a reliable procedure for regulatory use, and it is not clear if the technique has been peer-reviewed.
RESPONSE: See April RTC, Section III.B.1.b, p. 62

SUMMARY: (3) Northeast States except Massachusetts were excluded from EPA's UAM-V State-by-State zero-out runs.
RESPONSE: See NOx SIP Call NFR, p. 57388, first column. Due to time constraints, EPA was only able to look at the impacts of UAM-V zero-out model runs outside of the OTR. EPA looked at source apportionment information within the OTR to assess the impact of OTR States on downwind receptors areas. Zero-out modeling for Massachusetts was performed because this State was the only State in the Northeast with relatively large NOx emissions that was not included in any of the OTAG subregional modeling. Other non-OTR States or non-OTR

portions of States were selected to respond to comments that emissions in all or portions of each of these States do not contribute significantly to downwind nonattainment.

SUMMARY: (4) EPA has not performed state-by-state source category specific zero-out runs.
RESPONSE: See NOx SIP Call RTC, section III.E.1, pp. 147-149.

SUMMARY: (5) Based on EPA's modeling, the NOx SIP call does not solve 1-hour and 8-hour ozone problems in the Northeast.
RESPONSE: The Clean Air Act does not require the downwind petitioner or EPA to demonstrate that the upwind reductions (with or without other reductions from local, national, or other regional measures) will result in attainment and maintenance of the downwind problem (see May 25 NFR, p. 28278).
Virginia DEQ (VIII-C-09, p. 9)

SUMMARY: Virginia commented that its latest UAM-V modeling results demonstrate the following: (1) point sources in Virginia do not significantly impact the Northeast; and (2) any NOx reductions on Virginia utilities beyond 55-65% NOx control are not needed and would represent an excessive regulatory burden without the commensurate benefit to air quality. According to the State, the relief sought by the northeast states is far more than is necessary to alleviate any impact upwind states have on 1-hour nonattainment areas in the northeast states.
Virginia DEQ (VIII-C-09, pp. 9-11)

RESPONSE: See NOx SIP Call RTC, Section III.B, pp. 113-114; NOx SIP Call NFR, Section II.C, p. 57397-98; and April RTC, Section III.A.2, p. 57-58.

EPA's significant contribution determinations were based on collective contribution. Therefore, if the total NOx emissions from an upwind State contribute significantly to a downwind petitioning State, then each large stationary source's emissions in the upwind State, or portion of the upwind State, covered by the petition is considered to be a significant contributor to nonattainment. Even though large point sources are only a portion of the total NOx emissions in each State, they comprise a sizable portion of the NOx inventory.

Virginia DEQ submitted UAM-V zero-out modeling for the 1995 OTAG episode which showed the downwind impacts from zero anthropogenic emissions in Virginia, and zero point source emissions in Virginia (see Docket number A-97-43, IV-D-96). Figures submitted by the Virginia Manufacturers Association show that the maximum downwind 1-hour impacts from all anthropogenic sources in Virginia are > 14 ppb in Philadelphia, > 6 ppb in New York City, and > 2 ppb in Greater Connecticut. They also show point sources to have > 2 ppb impacts in Philadelphia and New York City (Docket number V-H-53) . EPA's modeling shows even larger downwind impacts when all anthropogenic sources are zeroed-out (EPA modeled all four OTAG episodes). The emissions inventory for Virginia shows that point sources make up 42% of the total NOx emissions in Virginia.

American Electric Power submitted CAMx source apportionment modeling which documents the source category contributions from many upwind States to downwind areas (Docket number V-H-136). Their CAMx modeling for the 1995 OTAG episode shows that approximately one-third of the downwind impacts from Virginia to 1-hour ozone > 125 ppb in the Baltimore/Philadelphia and New York/Connecticut areas were due to point source emissions.

Examination of EPA's modeling as well as the modeling submitted by Virginia DEQ, the Virginia Manufacturers Association, and AEP shows that emissions in Virginia have a significant impact on 1-hour ozone in Philadelphia, New York City, and Greater Connecticut. Therefore, each large stationary source in Virginia is considered to be significantly contributing to nonattainment in Philadelphia, New York City, and Greater Connecticut. The modeling also shows that point sources in Virginia have downwind impacts that are quantifiable , and proportional to the percentage of statewide NOx emissions made up by point sources.

SUMMARY: One commenter believes that EPA's "collective contribution" approach is without merit. According to the commenter, the May 25, 1999 NFR is not technically defensible in that EPA has not done the required culpability analysis to determine which sources in which states are significantly contributing to nonattainment in petitioning states. The commenter adds that §126 addresses only major stationary sources, but EPA has relied on an analysis that examined total emissions from all source categories. According to the commenter, using this approach to determine "significant contribution" is inappropriate.
Virginia DEQ (VIII-C-09, pp. 4-5)
RESPONSE: <u>See</u> May 25 NFR, pp. 28282-83

SUMMARY: One commenter stated that its previous comments showed that EPA failed to demonstrate which regions were responsible for downwind nonattainment. According to the commenter, EPA's May 25 NFR did not adequately address these comments, and the commenter continues to believe that EPA has not adequately demonstrated a significant contribution to downwind nonattainment.
AF&PA (VIII-C-14, footnote #15)

RESPONSE: <u>See</u> April RTC, Section III.A.2, pp. 56-57 and Section III.C, pp. 73-82; <u>See</u> also May 25 NFR, Tables II-1 and II-2, p. 28294 for a listing of upwind States which contain sources that contribute significantly to 1- and 8-hour nonattainment in petitioning States.

SUMMARY: One commenter believes that relief requested by the petitioners is far more than is necessary–any reductions beyond 55-65% advocated by the Southeast/Midwest Governors' Coalition do not benefit air quality. Virginia DEQ presented the latest UAM-V modeling results showing the impact of controls from Virginia utilities on 1-hour ozone concentrations inside and outside Virginia.
VA, pp. 9-17 (VIII-C-09)

RESPONSE: <u>See</u> SIP Call RTC, Section III.B.1, pp. 108-114; "Air Quality Modeling Technical Support Document for the NOx SIP Call, pp. 58-75.

SUMMARY: One commenter believes that available modeling data do not support the level of controls EPA continues to require, and the data demonstrate that a 0.15 lb/mmBtu emission rate is not necessary to ensure downwind attainment with the 1-hour standard. The commenter cites ACAP modeling (see SNPR comments on NOx SIP Call) demonstrating that--

(1) Most ozone in any nonattainment area is due to local emissions, the surrounding State and immediately adjacent upwind States;

(2) the contribution of distant States (150-200 miles from the source) to elevated ozone levels is trivial, due to the variability and imprecision of ozone transport modeling techniques;

(3) ozone transport is often attributable more to the low-level emissions of NOx and VOCs from area and point sources than from elevated NOx point sources such as utilities;

(4) implementation of NOx controls in the absence of a strategy for addressing low-level releases of ozone precursors can significantly increase ozone levels in nonattainment areas;

(5) the most dramatic ozone improvements as a result of the SIP call controls would be in non-problem areas (attainment or near attainment) where these controls will reduce ozone levels significantly below the NAAQS;

(6) conversely, in the absence of additional local controls, even NOx reductions at the 85 percent level will be insufficient to achieve the 1-hr (and 8-hr) ozone standards in severe nonattainment areas, particularly in the Northeast corridor, but including other areas like Chicago;

(7) in the Northeast corridor nonattainment areas (e.g., NY) there would be essentially no reduction in ozone transport if successively higher level of NOx controls (55, 65 and 85%) are applied to utility sources outside the Ozone Transport Region;

(8) the cost-effectiveness of NOx controls falls sharply outside the source area and immediately adjacent upwind States; and

(9) since elevated NOx emissions distant from downwind nonattainment areas make an insubstantial contribution to ozone levels in these areas, the cost effectiveness of controlling these upwind emissions should be compared to the cost effectiveness of both NOx reductions and low-level controls within or adjacent to the nonattainment area itself.
Cinergy, pp. 14-15 (VIII-C-16)

RESPONSE:

(1) See NOx SIP Call RTC, Section III.F.3, pp. 156-157, NOx SIP Call NFR, Section IV.C, and Air Quality Modeling TSD.
(2) See April RTC, Section III.B.4, pp. 67-68 (discussion of transport distances)

(3) See NOx SIP Call RTC, Section III.F.1, pp. 154-155 (discussion of point vs. low-level NOx and NOx vs. VOC)

(4) See NOx SIP Call RTC, Section III.F.1, pp. 154-155 (discussion of point vs. low-level NOx) and Section II.F.2, pp. 155-156 (discussion of NOx disbenefits)

(5) See NOx SIP Call RTC, Section III.F.3, pp. 156-157 (discussion that upwind controls have

greater downwind benefit in areas where ozone concentrations are low)

(6) See April RTC, Section III.B.9, p. 128 (85% NOx reductions)

(7) See April RTC, Section III.A.4, pp. 59-60 (effectiveness of control outside OTR)

(8) & (9) See NOx SIP Call NFR, Section II.E, p. 57405 (2nd column) (cost effectiveness of upwind emissions reductions).

SUMMARY: North Carolina believes EPA unlawfully considered the cost of emissions controls in makings its determination of “significant contribution” in the §126 rulemaking. If cost-effectiveness is considered in the proposed remedy, North Carolina believes that EPA should calculate cost effectiveness based on costs of controls per the amount of ozone reduction in the petitioning states, not based on the cost of controls per ton of NOx removed. According to the commenter, this calculation will show that it is more cost effective to control NOx emissions in and near the petitioning states than to control NOx emission in distant states such as North Carolina.
NC DENR (VIII-C-17, pg. 2 and pg. 5)

RESPONSE: See April 1999 RTC document, Section II.B, pp. 18-20.

SUMMARY: One State commented that the latest round of §126 petitions provides EPA an opportunity to develop and use a clear and objective definition for significant contribution. By developing such a definition, the commenter added that EPA will avoid many of the pitfalls that have obstructed the NOx SIP call and the §126 rulemakings. The State resubmitted its 11/30/98 methodology for significant contribution test.
Missouri (VIII-C-20, pg. 1, Appendix A)

RESPONSE: EPA’s response to Missouri’s analysis for significant contribution (A-97-43, IV-D-23, Appendix A) is found in the May 25 NFR, Section II.B.1.c, p. 28283-28284, and theApril RTC (April 1999), Section III.C.2, pp. 76-77.

SUMMARY: Virginia Power questions EPA’s decision to decouple the §126 and SIP call processes (at least in terms of timing) while EPA still relies on the same technical modeling analyses as the basis for its findings under §126 that it used in promulgating the SIP call. As the commenter has stated in previous comments, EPA’s reliance on modeling impacts from all manmade sources (including VOC’s as well as NOx) as the basis for findings under §126 is inappropriate and contrary to the Clean Air Act. The commenter believes that EPA fails to mention this inappropriate linkage in its June 24, 1999 proposal, much less address it.
Virginia Power (VIII-C-19, pg. 4)

RESPONSE: EPA has addressed this comment in the April RTC, April 1999, section III.A, pp. 54-55.

SUMMARY: One commenter believes that EPA has not properly considered all of the modeling data available to it; therefore, the commenter resubmitted modeling information that was incorporated into its previous comments on the NOx SIP call and the §126 petitions. The commenter's analysis of the modeling results leads it to conclude that reductions beyond Title IV from utility source NOx emissions are not necessary in the Midwest to address 1-hour ozone issues in the §126 petitioning states. According to the commenter, modeling also indicates that volatile organic compounds (VOC) controls will be necessary in a number of receptor areas to resolve 1-hour ozone nonattainment issues. The commenter believes there is ample justification for EPA to reject the §126 petitions as they relate to the 1-hour standard. **AEP (VIII-C-15, pp. 2-3)**

RESPONSE: See NOx SIP Call RTC, Section III.B.9, pp. 126-128; and April RTC, Sections III.A.2, pp. 56-57, and III.A.4, pp. 59-60.

SUMMARY: Indiana Department of Environmental Management maintains its position that EPA erred in concluding that Indiana significantly contributes to downwind nonattainment. **Indiana (VIII-C-36, pg. 2)**

RESPONSE: See April RTC, Section III.A.2, p. 56.

SUMMARY: North Carolina continues to believe that it does not significantly contribute to 1-hour nonattainment areas in the petitioning states and that EPA has failed to show evidence to the contrary. Therefore, North Carolina reiterates its requests to be excluded from findings under the §126 petitions. See state-specific modeling submitted with NC DENR's June 24, 1998 comments on the NOx SIP call and its November 30, 1998 comments on the §126 notice of proposed rulemaking (NPR).
NC DENR (VIII-C-17, pg. 2)

RESPONSE: See April RTC, Section III.A.2, p. 57-58.

SUMMARY: In response to the NOx SIP call, the state of North Carolina commented that EPA's proposed SIP does not provide sufficient technical evidence supporting its finding that certain major sources in North Carolina significantly contribute to downwind ozone nonattainment. **RJ Reynolds (VIII-C-18, pg. 2)**

RESPONSE: See April RTC Section III.A.2, p. 56-57; NOx SIP Call RTC, Section III..B.4, pp. 117-119.

SUMMARY: SEMCOG and Michigan submitted the ENVIRON report, "Review and Assessment of the Contribution of Ozone Transport and Emissions from Michigan to Ozone Nonattainment in the Petitioning States." The report summarizes existing technical and photochemical modeling carried out by EPA, SEMCOG, and other stakeholders. The report concludes that:

(1) Long-range transport accounts for a small fraction of the ozone in the petitioning states of New York, Connecticut, Delaware, New Jersey, and Maryland. For each petitioning state, emissions from within each petitioning state and immediate neighboring states causes the vast majority of the nonattainment ozone levels.

(2) The determination of significant contribution by the petitioning states is inconsistent. In fact, Michigan contributes less to ozone nonattainment in the petitioning states than other states not named in the petitions.

(3) EPA's criteria for assessing significant transport in the §126 petition rulemaking is inconsistent with the SIP call criteria.

(4) Since Michigan's contribution is minimal, any control strategy implemented by Michigan would have limited benefit in the petitioning states.

(5) The remedial actions requested will yield negligible ozone benefits in the nonattainment areas of the petitioning states.

(6) EPA based its determination of the needed level of NOx reductions to impose on Michigan's sources on a cost-effectiveness calculation for NOx controls. This approach is not valid. This focus on the cost of NOx control, rather than on the cost of ozone reductions, skews the conclusions to make NOx controls appear to be the best solution.

(7) Certain states asserted that reductions in NOx emissions from upwind sources were necessary in order for them to reach attainment; however, actual monitoring data shows this is not the case. Attainment has already been achieved in many areas where the controls were presumed necessary, a fact recognized by the EPA through its revocation of the 1-hour standard.
SEMCOG (VIII-C-29, pg. 3); Michigan DEQ (VIII-C-30, pg. 3); City of Detroit (VIII-C-34, pg. 1)

RESPONSE:
(1) See April RTC, Section III.A.5, p.60.

(2) For the general response to issues of significant linkage determinations, see April RTC Sections III.C.1 and III.C.2, pp.73-82. Additionally, there are some cases in the section 126 final rule where States would have been determined to significantly impact petitioning States, but the petitioning State did not include those upwind States or partial States in its 126 petition. For example, Illinois' impact on New York was found to be significant under the NOx SIP call, but was not included in the section 126 final rule because New York did not request relief from Illinois in its petition. Because of the nature of the 126 petitions, some determinations may appear to be inconsistent in the section 126 final rule, but this is not the case because EPA's significant linkages are consistent based on the weight of evidence determinations made in the NOx SIP call and then subsequently applied to the section 126 final rule.

(3) See April RTC Section III.C.1 and III.C.2, pp.73-82.

(4) See April RTC Section III.A.4, p. 59.

(5) See April RTC Section III.A.4, p. 59.

(6) See April RTC Section VI.F, p. 171.

(7) The section 126 final rule is only making determinations for petitioning States with 1-hour nonattainment areas that have not been revoked. The States of New York, Pennsylvania, Connecticut, and Massachusetts still contain 1-hour nonattainment areas that receive significant contributions of ozone from upwind States. EPA believes that it is proper and necessary to approve their 126 petitions in order to provide needed ozone reductions which will help the petitioning States attain the 1-hour standard. Whether or not other nonattainment areas are meeting or have met the 1-hour standard is irrelevant to the approval of the 126 petitions from New York, Pennsylvania, Connecticut, and Massachusetts (except for areas in those States where the 1-hour standard was revoked).

Additionally, EPA is proposing to reinstate the 1-hour standard in all previously designated areas across the country including the petitioning States of Pennsylvania, New York, Massachusetts, Rhode Island, New Hampshire, and Maine. Several revoked 1-hour nonattainment areas have had recent exceedances and even violations of the 1-hour ozone standard. Future determinations of significant contributions to nonattainment and/or maintenance of the 1-hour standard could be considered in areas where the standard is reinstated.

SUMMARY: American Electric Power (AEP) commented that its modeling previously submitted to EPA demonstrates that the Midwestern states and West Virginia do not have meaningful influence on ozone levels in the Amtrak Corridor. According to the commenter, this is consistent with information recovered by MOG in its Freedom of Information Act (FOIA) requests to many of the northeastern States. AEP believes that documents uncovered by these requests clearly indicated that these States knew that their ozone problems were due to conditions in areas immediately adjacent to them, not transport from the Midwest. According to the commenter, the modeling clearly demonstrates that air quality in these areas would be improved to a greater extent by implementing a mix of controls on both the low level and mobile sources as well as nearby point sources, and not through a strategy of targeting only utility point sources at the level of control dictated by EPA and the SIP Call.
AEP (VIII-C-15, pg. 3)

RESPONSE: EPA has previously responded to a similar comment in the NOx SIP call RTC, Section I.K, p. 51. As stated in that response, the commenter is referring to general statements that do not cite air quality modeling studies. As a result, EPA does not consider these statements to be probative. EPA has relied on air quality modeling analyses to evaluate the contributions to air quality problems in downwind states made by particular upwind states.

SUMMARY: North Carolina asks the following questions:

1. For the 1-hr standard, how do NC's impacts on the petitioning States compare to the impacts of the States which EPA determined are not significantly impacting nonattainment in the petitioning States?
2. In particular, how do NC's impacts on the petitioning States under the 1-hr standard compare with those of AL, CT, IL MA, MO, RI and TN?
3. What differentiates NC from those seven States under the 1-hr standard?

NC DENR (VIII-C-17, pg. 2)

RESPONSE: For general information explaining EPA's significance test, see April RTC

Sections III.C.1 and III.C.2, pp.73-82. A specific response as to how North Carolina's impacts on petitioning States compares to the impacts from AL, CT, IL, MA, MO, RI, and TN is explained below:

North Carolina was found to significantly contribute to 1-hour nonattainment in the petitioning States of New York and Pennsylvania. The 1-hour nonattainment areas in these two States are Philadelphia and New York City. The following table compares some of the UAM-V zero-out impacts of North Carolina on New York City and Philadelphia with the other States questioned by North Carolina. The metrics from the CAMx source apportionment modeling were also used as part of the significant contribution analysis. The UAM-V metrics presented here are solely to illustrate the differences between impacts to these States.

	New York City			**Philadelphia**		
Upwind State	**% Total ppb reduced > 125 ppb**	**% of exceedances reduced > 2 ppb**	**Max. 1-hr contribution (ppb)**	**% Total ppb reduced > 125 ppb**	**% of exceedances reduced > 2 ppb**	**Max. 1-hr contribution (ppb)**
NC	3	2	3.6	4	4	4.4
AL	0	0	0.4	0	0	0.3
IL	3	3	2.9	5	0	1.8
MO	1	0	0.7	1	0	0.7
TN	1	0	0.5	2	0	0.6
MA	0	0	0	0	0	0
CT	N/A	N/A	N/A	N/A	N/A	N/A
RI	N/A	N/A	N/A	N/A	N/A	N/A

North Carolina was found to be significantly contributing to both New York City and Philadelphia in part because of its relatively large maximum 1-hour contributions (3.6 and 4.4 ppb to New York and Philadelphia respectively) and % total ppb reduced > 125 ppb (3% and 4%). It can be seen that the impacts from AL, MO, TN, and MA to New York, and the impacts from AL, MO, TN, MA, and IL to Philadelphia have a maximum 1-hour contribution less than the 2 ppb screening test criteria used by EPA as part of the test for eliminating upwind to downwind linkages that are not significant. Thus these linkages were found to not be significant because the maximum contribution was less than 2 ppb.

The Illinois contribution to New York is similar to North Carolina, and both States were in fact found to contribute significantly to New York in the NOx SIP call. But New York did not include sources in Illinois in its 126 petition, and therefore Illinois was excluded from the section 126 final rule.

UAM-V zero-out modeling was not conducted for Connecticut and Rhode Island, but these States were found to not significantly contribute to Philadelphia based on CAMx results (the maximum 1-hour impact of 0.1 ppb fails the 2 ppb screening threshold). EPA did not make a significance finding for Connecticut and Rhode Island to New York City because part of Connecticut is in the New York City nonattainment area (and in the CAMx modeling Connecticut and Rhode Island were modeled together as a single source area).

These modeling results show that the significant ozone impacts from North Carolina to New York and Pennsylvania are clearly distinguishable from the impacts of AL, IL, MO, TN, MA, CT, and RI. The significant impact findings for North Carolina under section 126 are consistent and justifiable.

OTAG Modeling and Analysis

SUMMARY: One commenter believes that EPA should revisit OTAG's modeling recommendations. According to the commenter, EPA has chosen to overlook several key elements in the OTAG recommendations. The commenter states that first and foremost is the issue of control in coarse grid areas. The commenter insists on equitable treatment for all split states, which could be established through the elimination of control requirements for all coarse grid areas and requiring control for all fine grid areas. While the commenter supports controlling coarse grid areas, it would like EPA to conduct additional modeling in order to determine the appropriate control level for such areas.
Missouri DNR (VIII-C-20, pg. 2)

RESPONSE: See April RTC, Sections III.A.3, pp. 58-59, and III.B, p. 174. See also NOx SIP Call RTC, Section II.A, pp. 64-65.

SECTION VI.C: Comment Period

Reopening of the Comment Period

SUMMARY: One commenter believes that EPA should reopen the comment period with respect to its findings under the 1-hour ozone standard and allow comment on the significant progress toward attainment made by several petitioning states.
Virginia Power (VIII-C-19, pg. 3)

RESPONSE: EPA believes that it has provided sufficient opportunity for the public to comment on this issue. The Agency has responded to the commenter's concerns at 64 FR 28292, column 1, May 25, 1999 (final rulemaking for section 126 petitions).

SUMMARY: Several commenters believe that EPA did not adequately address their previous comments on the Advanced Noticed of Proposed Rulemaking (63 FR 24058, April 30, 1998) and other previous comments on various proposed §126 rulemakings. **Virginia DEQ (VIII-C-09, pg. 1); AF&PA (VIII-C-14, pg. 1); AEP (VIII-C-15, pg. 1)**

RESPONSE: EPA was not obligated to respond to comments on the ANPR, but addressed many of the points in the May 25, 1999 NFR, RTC and Air Quality Modeling TSD. The Agency has considered all comments in developing the final rule and believes it has addressed all comments either generally in the May 25, 1999 final rule, in this final rule. Responses to specific comments are provided in the April 1999 RTC document as well as this document which responds to comments on the June 24, 1999 NPR, the August 9, 1999 Notice of Data Availability (NODA), and specific comments on the control remedy (the Federal NOx Budget Trading Program) which were not addressed in the May 25, 1999 final rule.

SECTION VI.D: Miscellaneous Comments

VI.D.1: Other Legal/Administrative Comments

SUMMARY: Commenters strongly dispute EPA's "scrivener's error" argument.
UARG (VIII-C-07, footnote #8); Duquesne Light (VIII-C-13, pg. 3)

RESPONSE: See May 25 NFR, Section II.A.2, pp. 28267-76; and April RTC, Section II.A.2, pp. 10-11.

SUMMARY: One commenter believes the §126 petition process is not proper until EPA follows the procedures set out under the CAA (i.e., Subpart 2). Assuming that EPA's reference to §110(a)(2)(D)(i) is correct, EPA should not be allowed to impose controls on upwind sources pursuant to §126 until downwind areas and states meet their obligations under the CAA to submit attainment SIPs in a timely manner and to implement local controls. EPA cannot address ozone nonattainment by considering §126 petitions (or a SIP call) until it has followed the process established by Congress in Sections 181-185B of the CAA to deal with ozone nonattainment.
Duquesne Light (VIII-C-13, pp. 3-4)

RESPONSE: See May 25 NFR, Section II.E, pp. 28290-91 and NOx SIP Call NFR, Section II.A(j), p. 57380.

SUMMARY: Commenters oppose the proposed section 126 findings and believe that EPA's ruling on the merits of the §126 petitions filed by the northeast states is technically and legally flawed.
Virginia Power (VIII-C-19, pg. 2); Duquesne Light (VIII-C-13, pg. 1)

RESPONSE: See April RTC, p. 3.

SUMMARY: North Carolina believes that the Section 126 process should only be used after each State has had the opportunity to develop a plan addressing their own nonattainment problem and contribution to downwind nonattainment. The commenter believes that section 126 petitions should only be granted after a State fails to address its impacts on downwind areas under a given standard. NC also states that it plans to begin the rule adoption process shortly for controlling utility emissions within the State; and it is committed to addressing the 8-hr standard and solving the ozone problems in the State, and eliminating impacts in downwind neighboring areas.
NC, p. 1, 5-6 (VIII-C-17)

RESPONSE: As stated previously in the May 25 NFR, p. 28273, using the section 126 process where a State has failed to adopt adequate SIP provisions allows a downwind State to force EPA consideration of the nonattainment problem and potentially achieve emissions reductions directly from sources, without the need to depend on action by the upwind State. Under Title I of the Act, States are primarily responsible for determining the mix of control measures necessary to achieve the NAAQS, while the federal government sets the uniform national goals and ensures that states act to meet them. *Train v NRDC*,421 U.S. 60 (1975). Section 126 is somewhat unusual in Title I in that it authorizes EPA to control sources directly, rather than providing a means for EPA to encourage states to control those sources. In that sense, it is similar to the provisions for federal implementation plans in section 110(c). With both of these provisions, Congress provided tools for direct federal action to address serious failures of State action. Nevertheless, Congress' clear preference throughout Title I is that States are to decide and plan how they will control their sources of air pollution, and the mechanism for imposing those controls at the state level is SIPs. However, where a State has failed to adopt adequate SIP provisions in the first place, it makes sense to provide an alternative mechanism to directly achieve the necessary emissions reductions from the sources. A State would always be free to regulate the sources itself in that instance by revising its SIP to include the necessary emission limits. EPA believes that this understanding of Congress' overall design for air pollution control supports EPA's interpretation that section 126 is intended to be used only to address the situation where the SIP fails to prohibit sources from emitting impermissible amounts of transported air pollutants.

VI.D.2: Comments on Air Quality Improvements, Missed Statutory Deadlines in Northeast States, and Compliance Schedule

SUMMARY: Several commenters question the need for 126 controls expeditiously on upwind States when EPA and petitioning States have for years ignored the CAA to implement required measures, such as enhanced I/M and rate of progress plans. The commenters also question the need for the NOx reductions under 126 process given improvements in air quality and the ability of several of the petitioning states to achieve compliance. According to the commenters, EPA should fully recognize and address the progress that the Northeast States have made in developing its rule on the section 126 petitions–air quality is improving; significant progress is being made toward attainment.
Virginia Power, p. 5 (VIII-C-19); UARG (VIII-C-07, pp. 16-24); IPL (VIII-C-10, pg. 3); Consumers Energy (VIII-C-21, pg. 2); Indiana (VIII-C-36, p. 3), AF&PA (VIII-C-14, p. 10)

RESPONSE: <u>See</u> May 25 NFR, Section II.E, p.p.28290-91 and Section II.F, p. 28292.

SUMMARY: One commenter believes that EPA should reassess the May 1, 2003 compliance date because meeting the compliance date is impracticable.
MOG (VIII-C-28, pg. 11)

RESPONSE: EPA has addressed the commenter's concerns and similar comments from others in the NOx SIP Call NFR, Section V.A, pp. 57447-50; NOx SIP Call RTC, Section II.C, pp. 67-91; and May 25 NFR, Section II.K, p. 28302 and April RTC, Section VI.C, p. 140-166.

SUMMARY: Several commenters expressed concern that many of the petitioning states continue to violate the CAA and that since the northeast states are not in compliance with their obligations under the CAA, their §126 petitions should be denied.
AEP (VIII-C-15, pg. 2); MOG (VIII-C-28, pp. 10-11); Virginia Power, p. 5 (VIII-C-19)

RESPONSE: EPA received similar comments on the 126 NPR (63 FR 56292, October 21, 1998) from those representing the interests of upwind sources concerned that the petitioning States have not completed all of the SIP requirements to which they are subject under the CAA

Amendments of 1990. See May 25 NFR, p. 28290-91 and NOx SIP Call NFR, p. 57380 for EPA's response.

VI.D.3: New Sources

SUMMARY: One commenter believes that the May 25 NFR should not pertain to new sources in perpetuity. According to the commenter, the petitions address existing sources only. **Virginia Department of Environmental Quality, (VIII-C-09, p. 7**)

RESPONSE: For the reasons explained in the April RTC document, Section II.E., page 39, EPA believes that is appropriate to include new sources in the May 25 NFR.

APPENDIX A - EGU/Non-EGU Inventory Issues

Comments submitted in response to Notice of Availability of Unit-Specific Information for Affected Sources Under the Section 126 and Proposed Section 110 FIP Rulemakings - August 9, 1999 (64 FR 43124)

INTRODUCTION

This appendix presents the responses of the Environmental Protection Agency (EPA) to the public comments received on EPA's notice of data availability and request for comment, 64 FR 43123, August 8, 1999 (the "NODA"). EPA reopened the comment period and further clarified that commenters may comment on all data in the files mentioned by the NODA on September 15, 1999 (64 FR 500411). The NODA made the following data available:

- Electric generation data from May through September for the years 1995 through 1998, for electric generating units (EGUs)

- Heat input data from May through September for the years 1997 and 1998 for all EGUs greater than 25 MW and heat rate data for EGUs greater than 25 MW.

- Heat input data from May through September for the year 1995 for non-electric generating units (non-EGUs) with a maximum rated heat input capacity of greater than 250 mmBtu/hour. EPA also requested non-EGU heat input data for 1996-1998 if a commenter believed that 1995 did not represent typical operations for a particular non-EGU.

This appendix is organized into five main parts: general inventory issues; unit-specific electric generation data; heat input data for units subject to the Acid Rain Program; EGU heat input data and applicability; and non-EGU heat input data and applicability. General comments on the section 126 rulemaking received during the NODA comment period are addressed in the main portion of this Response to Comments document (primarily in Section II). For sources affected under the section 126 final rule, the responses in this document are the same as those for the inventory for the NO_X SIP call and the section 126 final rule in "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NOx SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

I. General Comments on Section 126 Inventory

SUMMARY: A number of commenters requested an extension of the comment period under the NODA and noted that such a short comment period will prevent many sources and state agencies from being able to perform the tasks necessary to provide meaningful comment to EPA.

LETTERS: American Electric Power (IX-D-78), American Public Power Association (IX-D-108), Conectiv (IX-D-17), Council of Industrial Boiler Owners (IX-D-59 and 106), Dayton Power & Light (IX-D-12), Delaware Department of Natural Resources & Environmental Control (IX-D-82), Indianapolis Light & Power (IX-D-02 and 50), Madison Gas & Electric Company (IX-D-92), Marathon Ashland Petroleum LLC (IX-D-53), Midwest Ozone Group (IX-D-30), Northern Indiana Public Service Company (IX-D-127), Orrville Department of Public Utilities (IX-D-77), Public Works Commission (IX-D-95), Utility Air Regulatory Group (IX-D-08), Virginia Power (IX-D-38, 80 and 85), West Virginia Division of Environmental Protection (IX-D-65)

RESPONSE: On September 15, 1999, EPA published a Federal Register notice that reopened the public comment period until September 24, 1999 (See 64 FR 50041). On September 10, 1999 EPA called or e-mailed those companies that directly contacted the contact person mentioned in the original August 9, 1999 notice to request an extension, (see September 13, 1999 memo from M. Sheppard, EPA to the Air Docket). This effectively gave the commenters an additional two weeks to comment on the data.

SUMMARY: Some commenters expressed concern that EPA has not provided adequate opportunity to comment on 1997 heat input data for Acid Rain Program units. These commenters added that EPA has only requested comment on heat input data for 1998 in response to the NODA, that EPA provided no data on individual units' 1997 heat input in the October 21 1998 proposals, and that EPA did not seek comment on the 1997 heat input data in response to the December 24, 1998, the May 14, 1999, or the January 13, 1999 notices. One commenter specifically requests that EPA consider requested revisions to the 1997 heat input data regardless of whether the unit reports under the Acid Rain Program. Another commenter concludes that EPA's suggestion that the opportunity was provided to comment on the 1997 heat input data fails under basic principles of administrative law.

LETTERS: Madison Gas & Electric Company (IX-D-92), Northern Indiana Public Service Company (IX-D-86 and 93), Utility Air Regulatory Group (IX-D-08)

RESPONSE: The Agency has provided opportunity for public comment on the heat input data for the ozone season of 1997 for all electric generating units, as well as for 1995, 1996, and 1998. The EPA emphasized this in its September 15, 1999 Federal Register notice that reopened the public comment period on supporting data for allocations (see 64 FR 50041). The Agency also notes that for units in the Acid Rain Program, designated representatives had already certified that the data in their quarterly reports, including heat input data, were accurate. See Section III of this Response to Comments document for an explanation of EPA's response to requests for changes to 1997 heat input data for units subject to the Acid Rain Program.

The EPA specifically requested comment on heat input data for the ozone season of 1995, 1996, and 1997 in the October 21, 1998 proposal (see 63 FR 56317). The Agency proposed NO_x allowance allocations in Appendix A of the October 21, 1998 proposal. The Agency also provided the supporting heat input data by year on the Regional Transport of Ozone website on

December 21, 1998, prior to the close of the reopened public comment period for the October 21, 1998 proposal. At least 14 commenters provided the Agency with heat input data for the ozone season of 1997 when the Agency put out the January 13, 1999 notice extending the comment period for the emissions inventory for the NO_x SIP call. Based on this, EPA concludes that the public has had sufficient opportunity to comment on the 1997 heat input data.

SUMMARY: One commenter expressed concern that identified states and potentially affected sources are being requested to commit time and resources to collect and analyze data for which EPA may ultimately have no use. This commenter recommended that EPA collect and review the appropriate data and should issue data for comment only after the allocation methodology is finalized.

LETTERS: Delaware Department of Natural Resources & Environmental Control (IX-D-82)

RESPONSE: The EPA disagrees. One of the factors the Agency considered in deciding on the basis for allocations is the quality of the data. The EPA judged the relative quality of the heat input data and the output data based upon comments that the Agency received on the data during the public comment period. If the Agency had chosen to provide only output data, for example, for comment, and had then received comments that the quality of the output data was inadequate, the Agency would still have needed to request additional comment on the heat input data or the output data. The EPA also notes that it provided the opportunity for comment on 97/98 heat input data and generation output data at the request of commenters that argued EPA should consider this information in developing initial allocations.

SUMMARY: One commenter requested that EPA clarify how the section 126 database was compiled and whether all of the listed sources will receive NO_x allowances and be subject to the Federal NO_x Budget Trading Program.

LETTERS: U.S. Steel (IX-D-88 and 133)

RESPONSE: EPA used the inventories developed under the NO_x SIP call to develop a list of sources potentially affected by the section 126 remedy. For EGUs subject to the Acid Rain Program, heat input was determined from hourly data reported to EPA. For other sources, heat input was determined by using the 1995 and/or 1996 NO_x mass values developed through the NO_x SIP call inventory and default emission rates based on unit type and assumed controls on the unit. It is, however, EPA's preference to use measured heat input values; thus, for EGUs and non-EGUs not subject to the Acid Rain Program, EPA has replaced heat input values if sources provided documented heat input values for the unit.

As mentioned in the August 9, 1999 notice of data availability, the list of sources comprises "sources that could potentially be affected by a Federal action under section126 or by a FIP under section110 of the Clean Air Act." (See 64 FR 43124.) EPA used the best data it had available at the time to create this list. This list is not intended to be a definitive list of sources affected by the section126 action. If a source does not meet the applicability requirements of Part 97, then that source is not subject to the NO_x Budget Trading Program even if EPA allocates allowances to that source under Part 97. If the owner or operator of a source believes that the source is not covered by the program and should not be on the list of sources receiving allowances, the owner or operator should contact EPA**.** Section 97.42 addresses how EPA will handle cases where sources not subject to the program are allocated allowances. Conversely, if a source meets the applicability criteria in Part 97 but is not allocated NO_x allowances, that source is still subject to Part 97.

SUMMARY: One commenter requested that EPA clarify whether units that fire by-product fuels, such as blast furnace gas and coke oven gas would be considered fossil fuel-fired units and whether units that fire by-product fuels and emit NO_x are included in the Federal trading program.

LETTERS: U.S. Steel (IX-D-88)

RESPONSE: Process gas derived from fossil fuel combustion is a fossil fuel under Part 97. This applies both to blast furnace gas and coke oven gas. Section 97.2 defines fossil fuel to include any solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

SUMMARY: One commenter noted that it is unclear how EPA will translate heat input data into NO_x emissions since the heat input data do not indicate the type of combustion unit or the type of fuel used.

LETTERS: Westvaco (IX-D-25)

RESPONSE: EPA is not translating heat input data into NO_x emissions. EPA has already gone through a rulemaking process to determine unit level NO_x mass emissions, for purposes of establishing emission budgets. For EGUs, EPA is using 1995 and 1996 heat input multiplied by 0.15 lbs/mmBtu to calculate the EGU NO_x trading budget. For non-EGUs, heat input data is not being used to calculate NO_x mass emissions for purposes of establishing emission budgets. The heat input data for non-EGUs on which EPA took comment on is being used solely for purposes of allocating allowances.

SUMMARY: Some EGU commenters noted that due to certain events or circumstances, their 1995 and/or 1996 heat input values do not accurately represent typical operations during the ozone season. These commenters argued that these data should be adjusted to reflect a more representative level of heat input and allocations. Similarly, a number of commenters requested that the 1995 heat input data for their non-EGU sources be modified based on a year other than 1995. These commenters requested that heat input data from 1996, 1997, or 1998 be used instead of the 1995 data since these years were more representative of typical plant operations. One commenter specifically noted that the highest heat input value between the years 1995 and 1998 should be used on a unit specific basis. Another commenter noted that an average heat input value should be used that incorporates data between 1995 and 1998. All other commenters that requested an alternative to 1995 heat input requested that data from a specific year be used for their sources.

LETTERS: DuPont (IX-D-83), Eastman (IX-D-107), Hamilton, OH (IX-D-72), Holland Board of Public Works (IX-D-75), International Paper (IX-D-47), LTV Steel (IX-D-89 and 90), Marquette Board of Light & Power (IX-D-47), Mead (IX-D-117), Merck (IX-D-58), P.H. Glatfelter (IX-D-18), Panther Creek (IX-D-20), Proctor & Gamble (IX-D-129), Sunoco (IX-D-09), Tosco (IX-D-57)

RESPONSE: See preamble section III.B.3. To address these concerns about atypical operations, EPA will base EGU allocations on the average of the two highest heat input values over a four year period (1995 - 1998). In the NODA, EPA made it clear that non-EGUs could provide data for 1996 -1998 for those non-EGUs that believed that 1995 operations were not representative of recent operation. Where the data are available for two or more years for non-EGUs, EPA is using the average of the two highest heat input values for 1995 through 1998.

SUMMARY: Some commenters expressed concern regarding the use of models or generic values to predict historic data for heat rate, heat input, and electric generation. One commenter noted that EPA's reliance on the use of predicted and generic values, rather than actual data, does not meet EPA's stated intent of using current, high quality data for the allocation of allowances. Another commenter noted that EPA should use actual data for heat rate instead of assigning default values based on the IPM model. This commenter added that heat rate values from EIA 860 are also inappropriate since these values are based on tested heat rate instead of actual performance history. One commenter also requested that EPA clarify how the heat rate values were calculated and noted that it is unclear whether these values are based on data from one year or an average of several years. This commenter recommends that EPA include actual heat rate information that represents an average value over five years.

LETTERS: Dayton Power & Light (IX-D-12 and 121), Delaware Department of Natural Resources & Environmental Control (IX-D-82)

RESPONSE: In the section 126 final rule EPA is allocating allowances based on heat input. Since EPA used heat rate values to convert heat input to electrical output and since electrical output is not being used to allocate allowances, these concerns are not relevant to the allocation methodology that the Agency has finalized. Therefore, EPA is not revising the heat rate values. One of the reasons that EPA has decided to allocate based on heat input is because of the concerns raised about the quality of the output data. As some of the commenters suggested, EPA is intending to develop a methodology to collect more accurate and reliable data that could be used to allocate based on output in the future.

EPA notes that in the files referenced by the NODA (64 FR 33962), the heat rate values for most utility units are from EIA form 860 for 1995. For units that did not report EIA form 860, primarily non-utility generators, EPA used generic heat rate values by unit type, size, and fuel (see 64 FR 43127 and 63 FR 56316).

SUMMARY: Some commenters requested the addition of units that have come on-line in 1997 or later.

LETTERS: City of Philadelphia (IX-D-55), Kansas City Power & Light (IX-D-44)

RESPONSE: These units are considered "new" units and thus will not receive initial NO_x

allowance allocations. They were not considered as part of the baseline emission inventory from which EPA developed the State trading program budgets. Those units may apply for allowances under the allocation set-aside.

SUMMARY: One commenter incorporated by reference generally their inventory comments submitted in response to previous rulemakings.

LETTERS: Missouri Department of Natural Resources (IX-D-100)

RESPONSE: The Agency has already responded to the specific and general issues raised by the commenter in previous, related rulemakings. See the NO_x SIP call RTC and see the response to inventory comments (A-96-56-VIII-B-201) in the "Response to the 2007 Baseline Sub-Inventory Information" in Docket A-96-56.

SUMMARY: One commenter stated that EPA should explicitly state that the states of Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee are not being considered for the Federal NO_x Budget Trading Program as a part of a section126 petition or the 110 Federal Implementation Plan rulemakings.

LETTERS: Missouri Department of Natural Resources (IX-D-100)

RESPONSE: See sections II.C., III.B.2 and III.B.3 of the preamble and the introduction to this appendix. These States are not included in the Federal NO_x Budget Trading Program in the section 126 final rule. The Agency is not currently taking any action to adopt Federal Implementation Plans under section 110 of the CAA.

II. Specific Comments on Output Data

SUMMARY: A number of commenters provided revised electric generation data and requested that these data be used for output based allocations. Some commenters submitted data from EIA 759 but provided what they believed to be a more accurate apportionment between the units at each plant. Many commenters provided revised data at the plant and unit level based on EIA 767, EIA 867 (now EIA 860B), EIA 900, or facility records. Some of these commenters attached these forms or their facility records as supporting documentation. Some of these commenters and other commenters also provided revised heat rate data, which is a data element that could be used for output calculation purposes.

LETTERS: AES Beaver Valley Partners (IX-D-13), Air Products & Chemicals Inc. (IX-D-70), Allegheny Power (IX-D-07), Ameren (IX-D-69), American Electric Power (IX-D-78), AMP-Ohio (IX-D-126), Central Hudson Gas & Electric (IX-D-96), Cinergy (IX-D-04, 105, and 124), City of Marquette (IX-D-03, 47, 104, and 112), Commonwealth Edison (IX-D-05), Conectiv (IX-D-116 and 141), Consumers Energy (IX-D-94), Dayton Power & Light (IX-D-121), Detroit Edison (IX-D-97), Duquesne Light Company (IX-D-66), EEI (IX-D-23), Empire (IX-D-140), Fayetteville Public Works Commission (IX-D-95), FirstEnergy (IX-D-79 and 115), Foster Wheeler Environmental Corporation (IX-D-11), GPU Genco (IX-D-56 and 118), Gilberton Power (IX-D-33), Hamilton, OH - City of (IX-D-72), Holland Board of Public Works (IX-D-76), Illinois Power (IX-D-54 and 125), Indianapolis Power & Light (IX-D-50 and 114), Inter-Power/AhlCon Partners (IX-D-45), Kansas City Power & Light (IX-D-44), Kinkaid Generation (IX-D-01), LG&E Power (IX-D-42), MassPower (IX-D-122), Midland Cogeneration Venture (IX-D-15), Morgantown Energy Associates (IX-D-10), Motiva Enterprises (IX-D-06), Northeastern Power (IX-D-21), Orville, OH - City of (IX-D-134), PECO Energy (IX-D-73), PG&E Generating (IX-D-68), PSE&G (IX-D-96), Panther Creek Partners (IX-D-20), Pennsylvania DEP (IX-D-24), Piney Creek LP (IX-D-22), Public Service Electric & Gas (IX-D-123), RJ Reynolds (IX-D-67), South Carolina Electric & Gas (IX-D-34), Southern Company (IX-D-63), Springfield, IL - City of (IX-D-61 and 120), Springfield, MO - City of (IX-D-43), TES Filer (IX-D-101), Trigen (IX-D-132), UtiliCorp United (IX-D-137), Vineland Municipal Electric Power (IX-D-60 and 103), Virginia Power (IX-D-80 and 135), Wheelabrator Frackville Energy Company (IX-D-64), Williams Generation (IX-D-49), Wisconsin DNR (IX-D-81), Wisconsin Electric (IX-D-51)

RESPONSE: In the section 126 final rule, EPA is allocating allowances based on heat input. Therefore, while the commenters raise valid concerns, those concerns are not relevant to the allocation methodology that the Agency has finalized. EPA is therefore not addressing these comments in today's rule. As some of the commenters suggested, EPA intends to develop a methodology to collect more accurate and reliable data that could be used to allocate based on output in the future.

One of the reasons that EPA has decided to allocate based on heat input is because of the concerns commenters raised about the quality of the output data. The purpose of making available for comment unit-specific data on electric generation and heat rate was to ensure that accurate information is available for developing NO_x allowance allocations for the Federal NO_x Budget Trading Program. Through the comments on electric generation data, EPA was able to evaluate the quality of the data currently available for allocations based on output. Based on the comments, it is clear that there are still issues to be resolved regarding the quality of electric generation and heat rate data. EPA will not be using this electric generation and heat rate data but instead will issue future regulations for monitoring and reporting output data. EPA intends to use the output data collected in the future in order to make output-based allocations for EGUs. Consequently, EPA is not adopting the requested revisions to either electric generation or heat rate data. See Section III.B.3 of the preamble to the section 126 final rule and Section 5.1 of the response to comments document for the section 126 final rule for a more detailed response regarding why electric generation will not be used as a basis for initial allocations.

III. Heat Input Data for Units Subject to the Acid Rain Program

SUMMARY: A number of commenters requested specific changes to the 1997 and/or 1998 heat input data for units subject to the Acid Rain Program.

LETTERS: [See the applicable comments listed under each State by State summary below]

RESPONSE: In most of these instances, the requested changes were relatively minor and appear to be due to rounding or slight variations in the methodology used to sum hourly data. The Agency believes that it is important to be as consistent as possible in the methodologies used to determine the information used in this inventory. The Agency developed the heat input for each unit in a consistent manner and relied on the hourly heat input rate and operating time data included in the quarterly reports submitted and certified by the affected sources. Under these circumstances, the Agency is not accepting minor changes for units in cases where the commenter did not explain how the requested values were calculated and why the values that EPA calculated using the data submitted by the sources were not accurate.

The EPA did not change any 1995 or 1996 heat input values for EGUs subject to the Acid Rain Program. In the NODA, the Agency stated that it was not taking comment on data other than those made available with the notice and was not taking comment on the emission inventories for the NO_x SIP call. The EPA has already requested comment on the 1995 and 1996 heat input data during multiple public comment periods. The Agency accepted two comments on heat input data for 1995 and 1996 for EGUs not subject to the Acid Rain Program. In these few cases, the commenter showed that the earlier heat input data were in error and the new values would be significantly lower. The EPA did not accept comments that would increase an EGU's heat input for 1995 or 1996. This would potentially disadvantage sources that could have submitted comments that would have increased their heat input values but did not submit them because 1995 and 1996 data was not covered by the NODA. Erroneous data that significantly overstates heat input values would result in significantly overstated allowance allocations for the sources involved and significantly understated allowance allocations for other sources. Consequently, EPA accepted comments only for these few cases where the commenter provided supporting documentation and where the new heat input values for 1995 and 1996 were significantly lower. The Agency addresses these specific requests under the applicable unit-specific comments, below. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

Requested revisions to the 1997 heat input data were addressed in a single step. The 1997 data for units subject to the Acid Rain Program were included initially in the inventory released in December 1998. Based on comments received during the extension period, EPA reanalyzed all of the 1997 data for units subject to the Acid Rain Program and revised the values for a number of units, although most of the changes were minor. The data released as part of the NODA reflected that reanalysis (see Table 1, below, for a list of these 1997 values compared to commenters' requested 1997 values). However, as a further quality assurance check on these data, EPA reevaluated individual emission report files for the Acid Rain Program for each unit where a commenter requested a revision that varied significantly from the value made available under the NODA. The Agency selected an initial significance threshold of a discrepancy of ± two percent. Based on that analysis of significant discrepancies, EPA adjusted the 1997 heat input values for only two units: Big Sandy (KY), unit BSU2, and Mt. Storm (WV), unit 1. The difference for these two units exceeded 37 percent and 80 percent, respectively. EPA agrees with the comments for these units and has adjusted the 1997 values accordingly. In all of the other circumstances, the data from emission reports for the Acid Rain Program evaluated by EPA remained inconsistent with the commenters' suggested revisions. In those cases, EPA did not adjust the heat input values that EPA used in the data made available as part of the NODA. Because the requested revisions were found to be appropriate for only two units with substantial differences, EPA did not proceed to reanalyze the 1997 data for any additional units with discrepancies less than two percent. The Agency determined that those remaining discrepancies are likely the result of methodological differences between the Agency's calculation (which had already been performed twice for those units) and the commenter's calculation.

As part of the NODA, EPA released the 1998 heat input values for all units subject to the Acid Rain Program based on an initial calculation and a preliminary review of the data. However, because of some significant discrepancies for a number of units between EPA's initial calculation and the commenters' requested revised values, EPA has recalculated the 1998 heat input data for all units subject to the Acid Rain Program as an additional quality assurance step for the 1998 data. This step is consistent with the action taken for the 1997 data prior to release of the data under the NODA. For a number of units, this recalculation resulted in a relatively small increase or decrease from the original value. In a few cases, the adjustment was more significant. Some of these adjustments addressed commenters’ requests for revisions to the 1998 heat input data. (See Table 1, below, for a list of these recalculated 1998 values as compared to commenters' requested values.)

As a further quality assurance check, EPA then analyzed individual unit data from emission reports for the Acid Rain Program for any units where the requested revision varied significantly from the revised 1998 values calculated by EPA. Based on the experience with the 1997 data, EPA used ± two percent as a significance threshold. This step treats the 1998 data consistently with EPA's consideration of 1997 data described above.

The only adjustment that was supportable based on this analysis was for Yorktown units 1 and 2 (VA). For both of these units, EPA's initially recalculated values were over 200 percent of the commenter's requested value. The unit-specific recalculation of 1998 values for those units were within ± 0.1 percent of the requested data for these units. Thus, EPA used the unit-specific recalculated values for these units.

For units addressed by the section 126 final rule, the following Table 1 summarizes the requested revisions to units subject to the Acid Rain Program as submitted in response to the NODA. For 1997, the heat input identified as EPA values represent the 1997 data released in the context of the NODA. For 1998, the data are the values EPA recalculated for all affected units under the Acid Rain Program, prior to considering discrepancies of greater than 2 percent on a unit-specific basis.

Table 1: Requested Revisions to 1997 and 1998 Heat Input for Units Subject to the Acid Rain Program and Addressed by the Final Section 126 Rule

ST	Plant	Plant ID	Point ID	97 HI (EPA)	97 HI (Requested)	98 HI (EPA)	98 HI (Requested)	Comment Letter(s)
DE	EDGE MOOR	593	3	2930860	2456890	2409740	2103740	IX-D-116
DE	EDGEMOOR	593	4	4069197	3373361	4731992	4021413	IX-D-116
DE	EDGEMOOR	593	5	5502246	4452507	7638136	6436904	IX-D-116
DE	HAYROAD	7153	**3	1343486	1057467	1684822	1466658	IX-D-116
DE	HAYROAD	7153	--1	0	1491606	1069645	1069645	IX-D-116
DE	HAYROAD	7153	--2	0	831204	1829101	1829101	IX-D-116
DE	INDIANRIVER	594	1	1862828	1511579	2095177	1755430	IX-D-116
DE	INDIANRIVER	594	2	2226615	1826444	2371839	1973779	IX-D-116
DE	INDIANRIVER	594	3	4216963	3553630	4520919	3788068	IX-D-116
DE	INDIANRIVER	594	4	6635691	5872880	8975537	8138908	IX-D-116
IN	TANNERSCREEK	988	U1	3642247	3641926	4195261	4199878	IX-D-78
IN	TANNERSCREEK	988	U2	3550040	3549808	2458809	2461842	IX-D-78
IN	TANNERSCREEK	988	U3	4405816	4405707	5811023	5815930	IX-D-78
IN	TANNERSCREEK	988	U4	11980186	11976988	11929274	11929275	IX-D-78
KY	BIGSANDY	1353	BSU1	8016776	8015982	5970903	5970566	IX-D-78
KY	BIGSANDY	1353	BSU2	29991390	21833142	24279672	24279397	IX-D-78
MD	RPSMITH	1570	9	37927	37988	138873	138753	IX-D-07
MD	VIENNA	1564	8	1660423	1189145	2502289	2047235	IX-D-116
NJ	BLENGLAND	2378	1	2244480	1700506	3617851	2844511	IX-D-116/141
NJ	BLENGLAND	2378	2	4637893	4038515	2629549	2632166	IX-D-116/141
NJ	BLENGLAND	2378	3	951222	793030	1738248	2889677	IX-D-116/141
NJ	BERGEN	2398	1201	1242566		1794370	1794370	IX-D-123
NJ	BERGEN	2398	1301	1506474		1133911	1133911	IX-D-123
NJ	BURLINGTON	2399	101	253293		284797	286482	IX-D-123
NJ	BURLINGTON	2399	102	254981		434426	437466	IX-D-123
NJ	BURLINGTON	2399	103	315570		458402	460284	IX-D-123
NJ	BURLINGTON	2399	104	260622		504829	509212	IX-D-123
NJ	DEEPWATER	2384	1	416044	238844	592377	553118	IX-D-116/141
NJ	DEEPWATER	2384	4	1730		102043	103470	IX-D-116/141
NJ	DEEPWATER	2384	6	10483	10996	25943	26025	IX-D-116/141

Table 1: Requested Revisions to 1997 and 1998 Heat Input for Units Subject to the Acid Rain Program and Addressed by the Final Section 126 Rule (cont.)

ST	Plant	Plant ID	Point ID	97 HI (EPA)	97 HI (Requested)	98 HI (EPA)	98 HI (Requested)	Comment Letter(s)
NJ	DEEPWATER	2384	8	2036088	766140	2190338	1796266	IX-D-116/141
NJ	KEARNY	2404	8	0		155676	156033	IX-D-123
NJ	LINDEN	2406	11	0		8118	8187	IX-D-123
NJ	LINDEN	2406	12	78222	78303	711	715	IX-D-123
NJ	LINDEN	2406	13	104125		101600	101872	IX-D-123
NJ	LINDEN	2406	2	226087	226378	525877	526114	IX-D-123
NJ	LINDEN	2406	7	687586		718262	718262	IX-D-123
NJ	MERCER	2408	1	4859038		6687350	6683393	IX-D-123
NJ	MERCER	2408	2	5642568		7537454	7534191	IX-D-123
NJ	SAYREVILLE	2390	08	208997		381951	409844	IX-D-56/118
NJ	SEWAREN	2411	1	282429	283138	552650	553133	IX-D-123
NJ	SEWAREN	2411	2	235478	236110	616684	616690	IX-D-123
NJ	SEWAREN	2411	3	351293		553707	552118	IX-D-123
NJ	SEWAREN	2411	4	652914		874772	897104	IX-D-123
NJ	SHERMAN	7288	CT-1	382280	315272	496415	466715	IX-D-116
NY	DANSKAMMER	2480	1	242006	272354	608892	615498	IX-D-96
NY	DANSKAMMER	2480	2	617458	702289	803081	818330	IX-D-96
NY	DANSKAMMER	2480	3	3744753	3715286	3902120	3870736	IX-D-96
NY	DANSKAMMER	2480	4	6924200	6927832	8084827	8088645	IX-D-96
NY	ROSETON	8006	1	4588109	4385466	10669152	10675987	IX-D-96
NY	ROSETON	8006	2	8806671	8801988	10801352	10803735	IX-D-96
OH	ASHTABULA	2835	10	39921	39332	254550	254440	IX-D-115
OH	ASHTABULA	2835	11	615483	614272	489669	488445	IX-D-115
OH	ASHTABULA	2835	7	4664379		5095720	5095429	IX-D-115
OH	AVONLAKE	2836	10	1875956		1330936	1330927	IX-D-115
OH	AVONLAKE	2836	12	16187679		12399533	12399489	IX-D-115
OH	BAYSHORE	2878	1	2613833	2613707	2736320	2735560	IX-D-115
OH	BAYSHORE	2878	2	3043308	3043102	3167633	3166910	IX-D-115
OH	BAYSHORE	2878	3	2854123	2853957	2900802	2899795	IX-D-115

Table 1: Requested Revisions to 1997 and 1998 Heat Input for Units Subject to the Acid Rain Program and Addressed by the Final Section 126 Rule (cont.)

ST	Plant	Plant ID	Point ID	97 HI (EPA)	97 HI (Requested)	98 HI (EPA)	98 HI (Requested)	Comment Letter(s)
OH	BAYSHORE	2878	4	3787382	3787213	4839089	4838682	IX-D-115
OH	CARDINAL	2828	1	10984661		15776033	15772861	IX-D-78
OH	CARDINAL	2828	2	15452075		13988009	13986670	IX-D-78
OH	CARDINAL	2828	3	14975248	14876077	16209280	16208700	IX-D-78
OH	CONESVILLE	2840	1	3285828	3281767	2969044	2968454	IX-D-78
OH	CONESVILLE	2840	2	3022435	3022191	2700173	2699530	IX-D-78
OH	CONESVILLE	2840	3	2737294	2737211	3466806	3467058	IX-D-78
OH	CONESVILLE	2840	4	16551820		16231074	16228691	IX-D-78
OH	CONESVILLE	2840	5	6530836	6522421	11729123	11728026	IX-D-78
OH	CONESVILLE	2840	6	7587528	7579710	11096236	11095214	IX-D-78
OH	EASTLAKE	2837	5	11994409		16420125	16420070	IX-D-115
OH	GENJMGAVIN	8102	1	40466469		33213321	33213321	IX-D-78
OH	HAMILTON	2917	9	1295732	1229086	1779682	1781054	IX-D-72
OH	LAKESHORE	2838	18	1692121		3303581	3303492	IX-D-115
OH	MUSKINGUMRIVER	2872	1	4657626	4657143	4385122	4382676	IX-D-78
OH	MUSKINGUMRIVER	2872	2	4575806	4575045	4583815	4581783	IX-D-78
OH	MUSKINGUMRIVER	2872	3	4129191	4128760	5315636	5312478	IX-D-78
OH	MUSKINGUMRIVER	2872	4	5377015	5376493	4857374	4854783	IX-D-78
OH	MUSKINGUMRIVER	2872	5	16691686		7683362	7676906	IX-D-78
OH	PICWAY	2843	9	2036957		2091206	2140929	IX-D-78
OH	REBURGER	2864	5	257524	257462	0		IX-D-115
OH	REBURGER	2864	6	251077	251019	0		IX-D-115
OH	REBURGER	2864	7	3968290	3966823	4915927		IX-D-115
OH	REBURGER	2864	8	4007666	4008366	3329100		IX-D-115
OH	WHSAMMIS	2866	1	5775739	5774888	5994277		IX-D-115
OH	WHSAMMIS	2866	2	5573145	5573096	6501713		IX-D-115
OH	WHSAMMIS	2866	3	5378603	5383590	4824967		IX-D-115
OH	WHSAMMIS	2866	4	4265576	4264692	6459486		IX-D-115
OH	WHSAMMIS	2866	6	14393851	14394151	16380727	16380697	IX-D-115

Table 1: Requested Revisions to 1997 and 1998 Heat Input for Units Subject to the Acid Rain Program and Addressed by the Final Section 126 Rule (cont.)

ST	Plant	Plant ID	Point ID	97 HI (EPA)	97 HI (Requested)	98 HI (EPA)	98 HI (Requested)	Comment Letter(s)
PA	ARMSTRONG	3178	2	4837947		5099205	5099205	IX-D-07
PA	BRUCEMANSFIELD	6094	1	20866370	20871265	22754012	22763700	IX-D-115
PA	BRUCEMANSFIELD	6094	2	16072295	16075155	23004306	23004393	IX-D-115
PA	BRUCEMANSFIELD	6094	3	20647203	20648112	21656543	21663576	IX-D-115
PA	CHESWICK	8226	1	13838385	13843794	11475642	11473319	IX-D-66
PA	MITCHELL	3181	2	5934		152390	152390	IX-D-07
PA	MITCHELL	3181	3	58831		177717	177718	IX-D-07
PA	PORTLAND	3113	--5	0	287345	1004302		IX-D-118
VA	CLINCHRIVER	3775	1	6999227	6998581	7068809	7068450	IX-D-78
VA	CLINCHRIVER	3775	2	6442720	6442165	6910396	6909998	IX-D-78
VA	CLINCHRIVER	3775	3	7592722	7593101	7159514		IX-D-78
VA	GLENLYN	3776	6	5553156		6772405	6772285	IX-D-78
VA	YORKTOWN	3809	1	4731400		9840602	4728087	IX-D-80
VA	YORKTOWN	3809	2	4497720		10867455	5239501	IX-D-80
WV	ALBRIGHT	3942	1	425996		1412707	1412663	IX-D-07
WV	JOHNEAMOS	3935	1	17899463	17898022	19551162	19547832	IX-D-78
WV	JOHNEAMOS	3935	2	18048924	18047531	15780011	15776397	IX-D-78
WV	JOHNEAMOS	3935	3	26089620	23064632	31884032	31884032	IX-D-78
WV	KAMMER	3947	1	5101970	5101887	6015428	6014834	IX-D-78
WV	KAMMER	3947	2	6577433	6576909	6084426	6083400	IX-D-78
WV	KAMMER	3947	3	7243541	7242694	6245259	6244417	IX-D-78
WV	KANAWHARIVER	3936	1	4862729	4862485	5618692	5618307	IX-D-78
WV	KANAWHARIVER	3936	2	4852771	4852671	5233552	5233210	IX-D-78
WV	MITCHELL	3948	1	20361630	20359839	19408718	19415759	IX-D-78
WV	MITCHELL	3948	2	18645707	18644696	18527108	18533835	IX-D-78
WV	MOUNTAINEER(1301)	6264	1	31417984	31464994	29471194	29451979	IX-D-65
WV	MTSTORM	3954	1	24772753	13759519	17536965	17553554	IX-D-80
WV	MTSTORM	3954	2	15844141		16112688	16130763	IX-D-80
WV	PHILSPORN	3938	11	3573138	3573031	3879179	3878791	IX-D-78

Table 1: Requested Revisions to 1997 and 1998 Heat Input for Units Subject to the Acid Rain Program and Addressed by the Final Section 126 Rule (cont.)

ST	Plant	Plant ID	Point ID	97 HI (EPA)	97 HI (Requested)	98 HI (EPA)	98 HI (Requested)	Comment Letter(s)
WV	PHILSPORN	3938	21	3634644	3634474	3074069	3073766	IX-D-78
WV	PHILSPORN	3938	31	3802364	3802190	3650080	3649473	IX-D-78
WV	PHILSPORN	3938	41	3610669	3610628	3576688	3576203	IX-D-78
WV	PHILSPORN	3938	51	6260849	6263151	10806770	10806278	IX-D-78

IV. EGU COMMENTS: UNIT-SPECIFIC HEAT INPUT DATA AND APPLICABILITY

A. DELAWARE

1. Motiva Enterprises (IX-D-06)

Requested Changes: Commenter provided heat input information for the years 1995 through 1998 for four units not subject to the Acid Rain Program, Delaware City (units B4, ST1, ST2, and ST3), and requested that the unit IDs for the units be listed as 67, 68, 69, and 70, respectively (which commenter notes are consistent with the NO_x Budget Program).

Commenter notes that the heat input information was based on annual emission inventory reports submitted to the Delaware Department of Natural Resources and Environmental Control. The current 1995 and 1996 heat input values are consistent with values requested by Delaware DNR in response to the NO_x SIP call during the extension period.

Action Taken: The requested 1997 and 1998 heat input values for units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter. The 1995 and 1996 values were inconsistent with data previously submitted by the State agency. Moreover, EPA specifically indicated in the NODA that EPA was not seeking comment on 1995 and 1996 values. Therefore, EPA did not accept the values requested in the comment for these years. With respect to the unit identifiers, EPA has not accepted those changes, as they do not match the most recent point identifiers in the OTC inventory (DCPP1 through DCPP4). EPA, however, did modify the Plant ID for Point B4; the unit had been erroneously listed under a different plant with the same name in the EGU inventory. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. Conectiv (IX-D-116)

Requested Changes: Commenter requested 1997 and 1998 heat input changes for a number of Delmarva Power and Light Company units: Christiana (11, 14), Edge Moor (3, 4, 5), Hay Road (1, 2, 3), Indian River (1, 2, 3, 4).

The Edge Moor and Indian River units and Hay Road (3) are units subject to the Acid Rain Program. Commenter notes that data were based on CEMs (for units subject to the Acid Rain Program) and monthly operating reports (for units not subject to the Acid Rain Program). Commenter provides a monthly summary of heat input data as supporting documentation. However, commenter did not explain why the previous data was incorrect or why the new data is more accurate.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter. The requested heat input revisions for units subject to the Acid Rain Program were not incorporated. See response in general to heat input revisions for units subject to the Acid Rain Program in

Section III of this appendix. After conducting the general checks and revisions to 1997 and 1998 data described in Section III of this appendix, EPA recalculated heat input from the units' data as submitted by the facilities for the Acid Rain Program. The data from emission reports for the Acid Rain Program did not support the requested revisions, and matched EPA's existing data either exactly or within a rounding difference. Thus, no changes were made to the existing data based on this recalculation quality assurance check.

B. GEORGIA

1. Southern Company (IX-D-63)

Requested Changes: Commenter requested 1998 heat input changes for the following units subject to the Acid Rain Program: Arkwright (1, 2, 3, 4), Hammond (3), and Robins (CT1, CT2). Commenter also requested 1997 and 1998 heat input and heat rate changes for the following other units: Atkinson (5A, 5B), Bowen (6A), Jack McDonough (3A, 3B), McManus (3A, 3B,3C, 4A, 4B, 4C, 4D, 4E, 4F), Mitchell (4A, 4B, 4C), Wansley (5A), Wilson (1A, 1B, 1C, 1D, 1E, 1F).

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

C. ILLINOIS

1. Illinois Environmental Protection Agency (IX-D-119)

Requested Changes: Commenter requested changes to heat input data for units at Com Ed and City Water, Light and Power facilities as provided in comments IX-D-05 and IX-D-120 (see below).

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

2. Commonwealth Edison (IX-D-05)

Requested Changes: Commenter submitted 1998 heat input for the following units: Fisk (31-1, 31-2, 32-1, 32-2, 33-1, 33-2, 34-1, 34-2) and Waukegan (31-1, 31-2, 32-1, 32-1). Illinois EPA emission inventory forms with ozone season fuel use are provided for documentation. Comments are also supported and submitted by IL EPA.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

3. Ameren (IX-D-19)

Requested Changes: Commenter requested 1997 and 1998 heat input changes for the Union Electric Venice combustion turbine that is not subject to the Acid Rain Program. Illinois emission inventory forms with ozone season fuel use are provided for documentation.

Action Taken: The section 126 final rule does not address this unit. If EPA takes further action that requires using these data, the Agency will address these comments.

4. Illinois Power (IX-D-54 and IX-D-125)

Requested Changes: In the first submittal, the commenter provided 1998 heat input data for the following units subject to the Acid Rain Program: Baldwin (1, 2, 3), Havana (6), and Wood River (2, 3, 4, 5), but noted that the differences were very small and did not request that these data be revised (differences are less than 0.1%). In the second submittal, the commenter specifically requested that the 1997 heat input data for Wood River (1, 2, 3) be revised. The requested revisions to Wood River (1, 2, 3) would increase 1997 heat input by less than 1%. The second comment letter also included an EIA-767 form for EPA to use to make changes in the 1998 heat input for Havana (6). Commenter's comparison of the data for Havana (6) lists EPA's 1998 heat input for the unit as 11,750,794, which is actually the value for Havana (9). EPA's 1998 heat input for unit 6 is currently zero. It is likely that commenter's heat input value could in fact, apply to unit 9 instead of unit 6.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

5. City of Springfield (IX-D-61 and IX-D-120)

Requested Changes: In their initial submittal, the commenter stated that EPA heat input data were generally consistent with the utility's data and no changes were requested. In the second submittal, the commenter requested changes to the 1997 and 1998 heat input for the unit identified as City Water, Light and Power (8016), and requests that the facility be listed as "Factory" with a unit ID of "1." The commenter also requested the addition of its Interstate Plant, a 139 MW simple-cycle natural gas/oil fired combustion turbine which began operation in September 1997. 1997 and 1998 heat input data were provided for the plant. No supporting information was provided for the heat input changes. Current EPA inventory lists 1997 and 1998 heat input for the Factory unit as zero. Form EIA 411 was submitted to document the existence of Interstate.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments. Since the Interstate plant began operations in September 1997, it will not be included in the current EGU inventory.

6. Southern Illinois Power Cooperative (IX-D-128)

Requested Changes: Commenter requested that EPA revise ozone season 1995 - 1998 heat input for the Acid Rain units identified as Marion Power Station (1, 2, 3, 4). No supporting documentation was provided.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.The heat input and operating time records from reports under the Acid Rain Program do not support either the commenter's total 1997 value or the percentage used to prorate that incorrect total to the two units. The 1995 and 1996 heat input values also were not adjusted in response to comment. First, the commenter provided no supporting documentation or rationale for the revision. Second, the commenter's requested revisions for 1997 and 1998 were found to be erroneous, and there is no reason to believe that the 1995 or 1996 requested revisions would be based on a different calculation methodology. Third, the existing 1996 data, the IL budget year, were supported by IL EPA in comments during the extension period (see A-96-56-VIII-B-62). For those reasons, and the reasons set forth in Section III, EPA did not accept the requested 1995 or 1996 revisions. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

D. INDIANA

1. American Electric Power (IX-D-78)

Requested Changes: Commenter requested that EPA correct 1997 and 1998 heat input data for Rockport (MB1 and MB2), and Tanners Creek (U1, U2, U3, and U4), all of which are subject to the Acid Rain Program. No supporting documentation was provided by the commenter and the differences in the commenter's and EPA's data are minimal.

Action Taken: The section 126 final rule does not address the Rockport units. If EPA takes further action that requires using these data, the Agency will address these comments. The requested heat input revisions for the Tanners Creek units were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

2. Indianapolis Power & Light (IX-D-50 and IX-D-114)

Requested Changes: Commenter requests revisions to the 1995 ozone season heat input for E.W. Stout (GT4) and Petersburg (2); and revisions to 1997 and 1998 heat input for H.T. Pritchard (3, 4, 5, 6) and Petersburg (1, 2, 4). All of these units are Acid Rain units. Supporting documentation for the heat input revisions was not provided.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.The requested revisions for 1995 also were requested during extension period comments (see A-96-56-VIII-B-31), and EPA did not accept the changes at that time. The NODA comments provide no further reason or supporting documentation for EPA to consider changing its position on those requested changes. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and

Federal Implementation Plans, Technical Amendment Version."

3. NIPSCO (IX-D-127)

Requested Changes: Commenter is concerned that the EPA inventory includes electric generation data but has no corresponding heat input information for the units listed as Bailly (10) and Schahfer (16A, 16B). Commenter requests an extension to October 8, 1999, to supply this information.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments. Based on requests from a number of commenters, EPA provided an extension of the initial comment period to September 24, 1999. See response in general to requests for an extension of the comment period in Section I.

4. Southern Indiana Gas & Electric Company (IX-D-110)

Requested Changes: Commenter notes that EPA has listed SIGECO A.B. Brown units 1 and 2, F.B. Culley unit 3, and Warrick Power Plant unit 4 in both the EGU and the non-EGU lists. All of these units should be listed only in the EGU inventory. Commenter notes that F.B. Culley units 1 and 2 should remain listed as EGUs. No supporting documentation is provided.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments. All of these units are currently listed in the EGU inventory and have been removed from the non-EGU inventory. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

E. KENTUCKY

1. American Electric Power (IX-D-78)

Requested Changes: Commenter requested that EPA correct 1997 and 1998 heat input data for the units subject to the Acid Rain Program at Big Sandy (BSU1, BSU2).

The 1997 HI as requested by the commenter for BSU2 is 37% lower than EPA's current value. The differences are minimal for all other revisions.

Action Taken: See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix. The requested heat input revisions to these units subject to the Acid Rain Program were not incorporated with the exception of the 1997 heat input for BSU2. Based on a comparison of the requested value with the data submitted under the Acid Rain Program, it appears that the 1997 heat input value requested by the commenter for this unit is accurate.

F. MARYLAND

1. Baltimore Gas and Electric (IX-D-40)

Requested Changes: Commenter submitted 1997 and 1998 heat input data for the following non-Acid Rain combustion turbines: Riverside (GT6), Westport (GT5), and Perryman (GT1, GT2, GT3, GT4). Commenter submitted fuel use data as submitted to PJM Power Pool and MD DOE as supporting documentation.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter.

2. Conectiv (IX-D-116)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat inputs for the unit subject to the Acid Rain Program listed as Vienna (8) and notes that these are based on CEM data. CEM data summaries by month are listed but no additional supporting documentation is provided. No explanation is provided regarding the cause of the differences. The 1997 and 1998 HI values as submitted by the commenter are significantly lower than EPA's existing data.

Action Taken: The requested heat input revisions to this unit subject to the Acid Rain Program were not incorporated. See response in general to revisions to heat input data for units subject to the Acid Rain Program in Section III of this appendix. EPA evaluated the emission reports for the Acid Rain Program submitted for this unit for 1997 and 1998, and found the data to match exactly EPA's existing data (after accounting for EPA's reassessment of all data for units subject to the Acid Rain Program in 1998).

3. Allegheny Power (IX-D-07)

Requested Changes: Commenter requested revisions to the 1997 and 1998 heat input rate for the unit subject to the Acid Rain Program listed as RP Smith (9). No supporting documentation was provided. Commenter notes that their heat input data are based on CEMS. Differences are minimal between source and EPA data.

Action Taken: The requested heat input revisions to this unit subject to the Acid Rain Program were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

G. MASSACHUSETTS

1. PG&E Generating (IX-D-68)

Requested Changes: Commenter requested changes in the 1997 and 1998 heat input for the facility currently listed as Altresco (Pittsfield) (units CC and CS). Commenter lists three combined-cycle units at this facility identified as Pittsfield (A, B, C). Commenter requests that EPA modify the entries for this plant to match the plant's configuration and to be consistent with the OTC program. The commenter supplied a spreadsheet with monthly heat input for the three units as identified in their letter, but without any supporting data.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. The commenter does not comment on the heat input values for 1995 and 1996, and thus the comments do not require any reconsideration of the statewide emissions budget for Massachusetts. Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.”

2. MassPower (IX-D-122)

Requested Changes: The commenter requested changes in the 1997 and 1998 heat input for the non-Acid Rain units currently listed in the inventory as four units at three plants: MassPower 1 (CC_r1), MassPower 2 (CC_r2), and MassPower (Monsanto) (CC_to and CW_to). The commenter notes that there should only be two combustion units at one plant listed for MassPower (CT1, CT2) and that there is no association with Monsanto. The commenter notes that there is also a steam turbine without heat input that produces electricity.

Commenter lists all three units (including the steam turbine) with Plant ID 10726. Only the two units listed as MassPower (Monsanto) are listed with this Plant ID (the other two MassPower units have a plant ID of n89 and n90). In the EPA inventory all four units were listed with zero heat input in 1997 and 1998. Commenter notes that heat input was derived from fuel use apportioned by percent gross unit generation. Supporting documentation for heat input was not provided.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. Also, although the commenter identifies some unit identification and segmenting discrepancies, the commenter does not comment on the 1995 and 1996 heat input values at the facility. Thus, the comments do not require EPA to reconsider the statewide emissions budget for Massachusetts. Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

H. MICHIGAN

1. City of Marquette (IX-D-03, IX-D-47, IX-D-104, IX-D-112)

Requested Changes: Commenter initially requested revisions to heat input values, but after reviewing CEM data found the EPA inventory acceptable.

Action Taken: No action taken since commenter found the data to be accurate.

2. Midland Cogeneration Venture (IX-D-15)

(1) Requested Changes: Commenter provided 1998 heat input for the units not subject to the Acid Rain Program identified as Midland Cogeneration Venture (units 003 through 014).

Action Taken: The requested heat input values for these units not subject to the Acid Rain Program were included based on the data provided by the commenter.

3. Detroit Edison (IX-D-97)

Requested Changes: Commenter submitted 1997 and 1998 heat input data for the units not subject to the Acid Rain Program listed as Hancock (5, 6). The EPA inventory currently lists zero heat input for these units in 1997 and 1998. Commenter notes that heat input was based on fuel use data.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data provided by the commenter.

4. TES Filer City Station (XI-D-101)

Requested Changes: Commenter submitted 1997 and 1998 heat input data for the unit listed as T.E.S. Filer City. The EPA inventory currently lists zero heat input for this unit in 1997 and 1998. Fuel use data were provided as supporting documentation.

Action Taken: The section 126 final rule does not address this unit. If EPA takes further action that requires using these data, the Agency will address these comments.

I. MISSOURI

1. Ameren (IX-D-19)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input for the following non-Acid Rain units: Ameren Viaduct (1), Fairgrounds (1), Howard Bend (1), Meramec (5), Mexico (-1), Moberly (-1), Moreau (-1). The EPA inventory currently lists zero heat input for 97 and 98. Ozone season heat input data were based on 2nd and 3rd quarter fuel use which appears to include April data. Missouri annual emission inventory reports are provided for documentation.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

2. City Utilities of Springfield (IX-D-43)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat inputs for the following Acid Rain units: James River (GT2, 4, 5) and Southwest (1); and the following non-

Acid Rain units: James River (GT1) and Southwest (GT1, 2). Commenter notes that monthly fuel use information was used to derive heat input data for the gas turbines and that steam unit data are from CEMS. No supporting documentation is provided.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

3. Kansas City Power and Light (IX-D-44)

Requested Changes: Commenter requested the addition of a new electric generating unit, Hawthorn (6), which went into operation in the third quarter of 1997. Commenter provides 1997 and 1998 heat input data for this new unit. Commenter also requests revisions to the 1997 and 1998 heat input for the units listed as Northeast Station (11-18).

Commenter notes that for Hawthorn (6), the 97 HI is calculated from fuel data and that the 98 HI data is from their CEM quarterly reports. No additional supporting documentation is provided for the revisions to Hawthorn. However, monthly fuel use data is provided to support the HI data submitted for Northeast Generating Station. The 97/98 HI data for the Northeast Station units are currently listed as zero.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. Also, note that Hawthorn (6) would be considered a new unit by EPA, and thus this unit does not affect the statewide emissions budget for MO.

4. St. Joseph Light and Power (IX-D-138)

Requested Changes: Commenter requested the removal of the units listed as Lake Road (4, 5) from the list of large EGUs, since these units supply steam under a common header system to three turbine generators less than 25 MW. Commenter also notes that the 1997 and 1998 heat input data for the unit listed as Lake Road (--5) are incorrect.

The 97 and 98 HI data for Lake Road (--5) is currently zero. No new data or supporting information are provided. The commenter recommended that EPA request relevant data directly from each plant.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

With respect to treating units 4 and 5 as large units, EPA identified these units as large units in the inventory released for comment during the extension period. The commenter did not submit comments at that time. However, the Missouri DNR did submit extension period comments that included a complete inventory for the state that requested numerous revisions (see A-96-56-VIII-

B-186). The state agency's inventory classified these units as large units. In addition, the 1998 Inventory of U.S. Power Plants compiled by the Energy Information Administration identifies these units as having nameplate capacity greater than 25 MW. Finally, the commenter does not provide supporting documentation that identifies the nameplate capacities of the generators served by these boilers. For all of these reasons, EPA has not reclassified these units for purposes of calculating the MO statewide emissions budget or for identifying units potentially affected by a Federal NO_x Budget Trading Program. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.

5. UtiliCorp (IX-D-137)

Requested Changes: Commenter noted that the 1997 and 1998 heat input data for the units listed as Greenwood Energy (1, 2, 3, 4), and Ralph Green (GT1) are incorrect. The commenter did not provide revised data, and recommended that EPA contact the State of Missouri for accurate information.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

6. Empire District Electric Company (IX-D-140)

Requested Changes: Commenter requested changes to the 1995, 1996, 1997, and 1998, heat input for Empire Energy Center (--1, --2) and State Line (--1). Commenter provides a table listing 1995 through 1998 "calculated" heat input and compares this value to "actual" heat input. It appears that the commenter intended to request that the "actual" data should be incorporated into the inventory. The heat input data for the Empire Energy Center are only listed at the plant level.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. For the 1995 and 1996 data, the existing EGU inventory values are based on comments submitted by the commenter during the extension comment period. The data provided during the NODA comment period would reduce the total heat input from all three units by only about 4,000 mmBtu in 1995 and 2,000 mmBtu in 1996. The commenter provided no explanation for the basis of this small revision, and thus EPA did not accept the requested revisions for purposes of calculating the statewide emissions budget for MO. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

J. NEW JERSEY

1. GPU Genco (IX-D-56 and IX-D-118)

Requested Changes: Commenter requested 1998 heat input changes for the following units not subject to the Acid Rain Program with zero heat input in the EPA inventory: Forked River (1, 2), Sayerville (C-1, C-2, C-3, C-4), Werner (C-1, C-2, C-3, C-4). In addition the commenter requested a change in the 1998 heat input for the unit subject to the Acid Rain Program listed as Sayerville (08). The 1998 heat input value for Sayerville (08) as requested is somewhat higher than the current value. Commenter notes that heat input data are based on quarterly emission reports for the Acid Rain Program.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data provided by the commenter. The requested heat input revisions to the unit subject to the Acid Rain Program listed as Sayerville (08) were not incorporated. EPA reassessed the 1998 heat input values for all units subject to the Acid Rain Program, but there was still a significant discrepancy for this unit. EPA then reassessed the data from the Acid Rain Program for this unit and confirmed EPA's values for this unit. See response in general to revisions to heat input data for units subject to the Acid Rain Program in Section III of this appendix.

2. City of Vineland (IX-D-60 and IX-D-103)

Requested Changes: The commenter requested revision to the 1997 and 1998 heat input data for the unit not subject to the Acid Rain Program listed as West Station (1). Fuel use documentation was provided.

Action Taken: The requested heat input values for this unit not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter.

3. PG & E Generating (IX-D-68)

Requested Changes: The commenter requested changes to the 1997 and 1998 heat input for the following units not subject to the Acid Rain Program: Carney's Point (ST_NUG) and Logan (1). Monthly fuel use data was provided to document the heat input changes.

Action Taken: The requested heat input values for these units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter.

4. Conectiv (IX-D-116 and IX-D-141)

Requested Changes: Commenter requested changes in the 1997 and 1998 heat input for the following units subject to the Acid Rain Program: B.L. England (1, 2, 3), Deepwater (1, 4, 6, 8) and Sherman (CT-1); and the following units not subject to the Acid Rain Program: Cumberland (--GT1), Mickleton (1), and Middle Street (3). Commenter also listed Carll's Corner (1, 2) as 41MW each and Cedar Station (IE&W) as 41.9 MW, which are currently included in the inventory as small EGUs (25 MW or less). Commenter also provided 1997 and 1998 heat input data for the unit not subject to the Acid Rain Program listed as Vineland VCLP. Monthly ozone season heat input for each unit is provided as supporting documentation. The requested revisions to facilities with units subject to the Acid Rain Program would significantly decrease the heat input data with the exception of the 1998 heat input for B.L. England, which would increase slightly.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter. The requested heat input revisions to the units subject to the Acid Rain Program were not incorporated. EPA reassessed the emission reports for the Acid Rain Program for these units, and did not find that the data supported the requested revisions. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

EPA has revised the nameplate capacity for Cedar Station (1E&W) and Carll's Corner (1,2) as requested by the commenter and as supported by a review of the Energy Information Administration (EIA) inventory of U.S. power plants (DOE/EIA-0095(98), December 1998).

5. PSE & G (IX-D-123)

Requested Changes: The commenter requested changes in the 1998 heat input for the following units subject to the Acid Rain Program: Bergen (1201, 1301), Burlington (101, 102, 103, 104), Hudson (2), Kearney (8), Linden (11, 12, 13, 2, 7), Mercer (1, 2), and Sewaren (1, 2, 3, 4), as well as the following units not subject to the Acid Rain Program: Burlington (11-1, 11-2, 11-3, 11-4, 9-1, 9-2, 9-3, 9-4), Edison (all units), Essex (all units), Hudson (3), Kearney (10, 11, 12-1, 12-2, 12-3, 12-4), Linden (6), Sewaren (6) and Salem (3A&B). Changes in the 1997 heat input data were requested for the following units subject to the Acid Rain Program: Linden (12, 2) and Sewaren (1, 2). Also, 1997 and 1998 heat inputs were provided for a number of small EGUs: Bayonne (1, 2), Bergen (3), Burlington (8), Kearny (3), National Park (1).

The heat input differences between the commenter's and EPA's values for units subject to the Acid Rain Program are less than 2 percent, with the exception of the 1998 heat input data for Burlington (101), Kearny (8), Linden (11), and Sewaren (1,2,4). The revisions to Burlington (101), Kearny (8), Linden (11), and Sewaren (4) would increase 1998 heat input by approximately 3, 7, 5, and 4 percent, respectively, and the revisions to Sewaren (1,2) would approximately triple the 1998 heat input for these units. For units not subject to the Acid Rain Program, the commenter submitted supporting data for calculating heat input, including heat rate values used to calculate heat input under the OTC NO_x Budget Program and revised generation values from EIA form 767.

Action Taken: EPA revised the heat input data for units not subject to the Acid Rain Program based on the data provided by the commenter, with the exception of Linden (6) for which the commenter did not provide heat input or heat rate data. No response for the small EGUs is necessary as they are not affected units. The requested heat input revisions to the units subject to the Acid Rain Program were not incorporated. However, EPA's revised 1998 heat input data for the units subject to the Acid Rain Program, Kearny (8) and Sewaren (1,2), are generally consistent with the requested revisions, and thus address those discrepancies. See also response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

K. NEW YORK

1. Central Hudson Gas and Electric Corp. (IX-D-96)

Requested Changes: The commenter requested changes to the 1997 and 1998 heat input data for the following units subject to the Acid Rain Program: Danskammer (1, 2, 3, 4) and Roseton (1, 2). In addition the commenter provided 1997 and 1998 heat input`information for two small EGUs: Coxsackie (CT) and South Cairo (CT). Commenter notes that the Danskammer and Roseton heat input data are from their Acid Rain CEM reports. Fuel use and monthly power plant reports were provided as supporting documentation. Differences are minimal for all of the heat input revisions requested as compared to the most current EPA data as obtained from emission reports for the Acid Rain Program.

Action Taken: The requested heat input revisions to the units subject to the Acid Rain Program were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix. Requested revisions to the small units were not incorporated since these revisions do not apply in the context of allocations.

2. Trigen Energy Corporation (IX-D-132)

Requested Changes: Commenter requested changes in the 1997 and 1998 heat input for the unit not subject to the Acid Rain Program listed as Trigen NDEC. In addition, the commenter provided 1995 and 1996 heat input data. Monthly fuel use records were provided as supporting documentation.

Action Taken: The requested 1997 and 1998 heat input values for this unit not subject to the Acid Rain Program were included based on the data and supporting documentation provided by the commenter. The NODA specifically stated that comments on 1995 and 1996 data would not be considered, and the existing data for these units was previously provided directly by the State agency. Moreover, the differences are minimal between the existing and requested data for 1995 and 1996 heat input. Based on these considerations, no changes were made to the 1995 and 1996 heat input for this unit. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

L. NORTH CAROLINA

1. LG&E Power (IX-D-42)

Requested Changes: Commenter requested 1997 and 1998 heat input changes for the units not subject to the Acid Rain Program listed as Roanoke Valley (1, 2). Heat input data were based on fuel use submitted in the annual emission inventory to the North Carolina Department of Environment and Natural Resources. A summary table of monthly 1997 and 1998 ozone season fuel use was provided as supporting documentation.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data and supporting documentation provided by the commenter.

2. R. J. Reynolds Tobacco Company (IX-D-67)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input for the units not subject to the Acid Rain Program listed as Tobaccoville (1, 2, 3, 4). The commenter also provided corrections to the 1995 and 1996 heat input as previously submitted. The commenter notes that it previously provided 1995 and 1996 ozone season heat input based on a six month ozone season. Monthly fuel use data was provided as supporting documentation.

Action Taken: The requested 1997 and 1998 heat input values for these units were included based on the data and supporting documentation provided by the commenter. The requested 1995 and 1996 heat input revisions also were incorporated since it is clear based on the commenter's request that the commenter previously provided inaccurate data that was relied on by the state agency and EPA. Although as a general rule EPA has not accepted comments on 1995 and 1996 data, these comments constitute a technical correction to data provided in the extension comment period. If EPA did not accept these comments on 1995 and 1996 data, the commenter would benefit significantly, through over allocation of allowances, from having mistakenly submitted inaccurate data in a prior comment period. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

3. Fayetteville Public Works Commission (IX-D-95)

Requested Changes: Commenter submits 1997 and 1998 heat input data for the units not subject to the Acid Rain Program listed as Butler Warner (1, 2, 3, 6, 7, 8).

Action Taken: The requested heat input values for these units not subject to the Acid Rain Program were included based on the data provided by the commenter.

M. OHIO

1. Cinergy (IX-D-04 and IX-D-105)

Requested Changes: Commenter noted that the NODA failed to identify Dicks Creek Station, Unit 1, as a large EGU. The unit is a 100 MW multi-engine unit (each jet engine is under 50 MW). No data or supporting documentation were provided for this unit; however, the unit is listed in the 1998 EIA inventory of U.S. power plants as one 100 MW jet engine (simple cycle turbine) generator. The current inventory includes Dicks Creek Unit 1 as a 2 MW unit. Commenter also notes that Miami Fort (CT2) did not operate in 1997 and 1998.

Action Taken: Dicks Creek is currently listed in the EGU inventory as a small unit and has been revised to reflect the combined nameplate capacity as listed by the commenter (100 MW) and verified by the EIA inventory. For Miami Fort (CT2), the 1997 and 1998 data currently listed in the inventory is zero, and thus reflects the fact that this unit did not operate in these years.

2. City of Hamilton (IX-D-72)

Requested Changes: Commenter requested revisions to 1997 and 1998 heat input data for the unit subject to the Acid Rain Program listed as Hamilton (9). Commenter also provided data for Hamilton (1, 7, 8) which are less than 25 MW and, therefore, are not affected units. Commenter notes that the requested revisions are based on CEMS but supporting documentation is not provided.

Action Taken: The requested heat input revisions to the unit subject to the Acid Rain Program were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix. No action was necessary for the heat input requests applicable to the unaffected units (i.e., units serving generators less than 25 MWe).

3. City of Orrville (IX-D-77 and IX-D-134)

Requested Changes: Commenter provided comments on small EGU units (i.e., units serving generators less than 25 MWe).

Action Taken: No action taken since requested revisions apply to small EGUs not subject to the section 126 final rule.

4. American Electric Power (IX-D-78)

Requested Changes: Commenter requested that EPA correct 1997 and/or 1998 heat input data for the following units subject to the Acid Rain Program: Cardinal (1, 2, 3), Conesville (1, 2, 3, 4, 5, 6), Muskingum River (1, 2, 3, 5), and Picway (9). No explanation is provided for the differences, which are minimal for all revisions.

Action Taken: The requested heat input revisions to the units subject to the Acid Rain Program were not incorporated. See Section III of this appendix for EPA's general response to these requested revisions.

5. Dayton Power and Light (IX-D-121)

Requested Changes: Commenter requested that EPA include OH Hutchings GT in the NO_x Budget databases as a large unit, although the commenter suggests that the unit should not be subject to controls because of its infrequent operation. The unit is a simple cycle combustion turbine greater than 25 MW. The commenter provided monthly fuel use information as supporting documentation for the heat input values for this unit. Heat input data for OH Hutchings GT were provided for 1995 through 1998. The OH Hutchings GT is listed as unit 7 in the 1998 EIA inventory with a nameplate capacity of 32.6 MW.

Action Taken: The OH Hutchings GT unit was added to the list of units receiving allocations based on the data provided and the corroborating information in the EIA inventory. Contrary to the commenter's suggestion, this unit is considered an affected unit under the Federal NO_x Trading Program as a large EGU. (The Agency notes that the section 126 final rule provides an exemption for certain units that are subject to a permit condition that restricts operation to a certain number of hours during the ozone season.) Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.”

6. FirstEnergy (IX-D-79 and IX-D-115)

Requested Changes: Commenter requests revisions to the 1997 and/or 1998 heat input for the following units subject to the Acid Rain Program: Ashtabula (7, 10, 11), Avon Lake (10, 12), Bay Shore (1, 2, 3, 4), East Lake (5), Lake Shore (18), RE Burger (5, 6, 7, 8), and WH Sammis (1, 2, 3, 4, 6). Commenter also requested changes to the 1997 and 1998 heat input for the following units not subject to the Acid Rain Program: Avon Lake (CT10), Eastlake (6), Edgewater (A, B), Mad River (A, B), Niles (A), and West Lorain (1A, 1B).

Differences are minimal for all revisions to units subject to the Acid Rain Program. Monthly fuel use records were provided as supporting documentation for the heat input revisions to the units not subject to the Acid Rain Program.

Action Taken: The requested heat input values for the units not subject to the Acid Rain Program were included based on the data and supporting documentation provided by the commenter. The requested heat input revisions to the units subject to the Acid Rain Program were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

7. Mead Corporation (IX-D-26)

Requested Changes: Commenter requests that the unit not subject to the Acid Rain Program listed as Mead - Fine Paper Division be removed from the EGU inventory. Commenter notes that there is no combustion turbine at this facility.

Action Taken: This unit was removed from the EGU inventory based on the information provided by the commenter.

N. PENNSYLVANIA

1. Pennsylvania DEP (IX-D-24)

Requested Changes: The state agency reviewed the heat input data for units not subject to the Acid Rain Program in the large EGU inventory in Pennsylvania (with the exception of Philadelphia and Allegheny County). Commenter requested changes to the 1997 and 1998 heat inputs for 28 units not subject to the Acid Rain Program based on monthly fuel data.

Commenter also requested that Penntech Paper be removed from the large EGU inventory because the facility does not have firm contracts for sale to the grid and the applicable unit is already represented in the non-EGU inventory.

In addition, the commenter: provided a breakout of four units at Trigen Energy Sansom and two units at Gilberton (both are currently listed as one unit) for addition to the large EGU inventory; corrected ID numbers for 7 units; noted that the units not subject to the Acid Rain Program listed as Mountain (1,2) and Tolna (1,2) each have a summer nameplate capacity of 20 MW; and suggested that all small EGUs should appear in the small stationary source inventory rather than the EGU inventory.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data provided by PA DEP, except for certain units for which the owner or operator provided data in NO_x SIP call or NODA comments. PA DEP's comments indicated that individual plants may provide comments based on more exact data for the ozone season, and that the data for the ozone season should be relied on instead of PA DEP's data. The state agency requested the opportunity to review the individual plant data prior to its use. However, given timing considerations and the generally minor discrepancies between the source and state agency data, EPA accepted the source data where it was based on data for the ozone season.

There are also some units for which PA DEP’s requested revision to 1997 heat input replaces data previously submitted in response to the NO_x SIP call by a source. For each of these sources, PA DEP had previously expressed support for the data submitted by the sources. Given that PA DEP's NODA comments rely on estimating seasonal heat input from annual data, EPA has continued to rely on the data provided by the sources.

As requested by PA DEP, the Trigen Energy Sansom facility was divided into four units. As a plant total, the requested 1996 heat input data for these four units are equal to the current heat input value for this facility (no 1995 values are included in the inventory). Thus, EPA was able to segment this facility into four units, and apportion the heat input for all applicable years based on the data provided. However, the Gilberton Power facility was maintained as one unit. The source provided 1995 through 1998 data from the ozone season as a single facility value. Although the combined PA DEP data for the two suggested segmented units at this facility are nearly the same as the data supplied by the facility, the PA DEP’s data is based upon prorating annual data, whereas the source’s data are actual data from the ozone season. Therefore, EPA continued to rely on the source's data and did not segment this facility.

The units listed as Mountain (1,2) and Tolna (1,2) were not reclassified as small since the nameplate design capacity for these units is greater than 25 MW. Net summertime capability is not the criterion used to determine applicability. EPA also notes that the utility owner of these units has not disputed EPA's classification of these units as affected units under the Federal NO_x Budget Trading Program. Finally, EPA has not moved the small EGUs from the EGU inventory. These units are not subject to controls merely because they are in the EGU inventory. The inventory includes both large units affected by the Federal NO_x Budget Trading Program and unaffected, small EGUs.

Penntech Paper was removed from the EGU inventory as requested because this unit is already accounted for under the non-EGU inventory (listed under its new name, Willamette Industries).

2. Allegheny Power (IX-D-07)

Requested Changes: Commenter requested revisions to 1997 and 1998 heat input data for the units subject to the Acid Rain Program listed as Hatfield's Ferry (1, 2, 3), and 1998 heat input for the units subject to the Acid Rain Program listed as Armstrong (2) and Mitchell (2, 3). The commenter's values are from Part 75 CEM data, but supporting documentation is not provided and no explanation is given for the differences. Heat input revisions to Hatfield's Ferry would lead to significant reductions in heat input values from the value that EPA took comment on. Differences are minimal for all other revisions.

Action Taken: The requested heat input revisions to the units subject to the Acid Rain Program generally were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix. However, the 1997 and 1998 heat input revisions for Hatfield's Ferry (1,2,3), which were provided by the commenter as a plant total, are approximately 4 percent lower than EPA's most current 1997 data and less than 1 percent lower than ARD's revised 1998 data for these units subject to the Acid Rain Program. The revised 1997 and 1998 heat input for these units reflects EPA's most recent data from emission reports for the Acid Rain Program.

3. Foster Wheeler (IX-D-11)

Requested Changes: Commenter requested a change to the 1998 heat input for the unit not subject to the Acid Rain Program listed as Foster Wheeler Mt. Carmel. The commenter provided monthly fuel use information for the 1998 ozone season, which was similar to the information reported to Pennsylvania in an annual report. PA DEP also submitted a 1998 heat input value for this unit, which is slightly lower than commenter's value.

Action Taken: The 1998 heat input for this unit not subject to the Acid Rain Program was revised based on the data provided by the commenter.

4. AES - Beaver Valley Partners (IX-D-13)

Requested Changes: The commenter requested changes to the 1997 and 1998 heat inputs for the four units not subject to the Acid Rain Program at AES Beaver Valley. Commenter also submits revised 1995 and 1996 heat input for these units. Documentation was provided on monthly fuel use including Pennsylvania annual emission statement forms. PA DEP also submitted 1997 and 1998 heat input data for these units. PA DEP had provided 1995 and 1996 heat input data in response to the NO_x SIP call. Commenter's heat input data for 1995 and 1996 are only slightly less than the data included in the current inventory.

Action Taken: The 1997 and 1998 heat input data for these units not subject to the Acid Rain Program were revised based on the data provided by the commenter. The requested revisions to 1995 and 1996 heat input data were not incorporated because: (1) as a general rule, EPA specifically stated in the NODA that 1995 and 1996 data comments would not be considered for EGUs; (2) the existing data is based on information previously submitted by PA DEP in response to the NO_x SIP call; and (3) the revisions are minimal (the commenter's request would decrease heat input by about 0.2% on a facility basis). Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.”

5. Panther Creek Partners (IX-D-20)

Requested Changes: Commenter requested changes in 1997 and 1998 heat inputs for the units not subject to the Acid Rain Program listed as Panther Creek (1, 2). Documentation was provided on monthly fuel use including PA DEP annual emission statement forms. PA DEP also submitted 1997 and 1998 data for these units which vary only slightly from commenter's data.

Action Taken: The heat input data for these units not subject to the Acid Rain Program were revised based on the data provided by the commenter.

6. Northeastern Power Company (Tractebel) (IX-D-21)

Requested Changes: Commenter requested changes in the 1998 heat input for the unit not subject to the Acid Rain Program listed as Northeastern Power facility. Commenter indicated that 1997 data in current inventory were accurate. Commenter noted a change in ownership of the Westwood cogeneration facility, but did not request any revision to the inventory for this facility. PA DEP also submitted revised 1997 and new 1998 heat input values for this unit which are slightly higher than the commenter's values.

Action Taken: The 1998 heat input data for this unit not subject to the Acid Rain Program were revised based on the data provided by the commenter. No revision to the 1997 data was necessary. See response to Cinergy (IX-D-124) for discussion of revisions related to the Westwood facility.

7. Piney Creek LP (IX-D-22)

Requested Changes: Commenter requested changes in the 1998 heat input for the unit not subject to the Acid Rain Program listed as Piney Creek (1). A spreadsheet with monthly fuel use and heat content was provided as supporting documentation. PA DEP also submitted revised 1997 and new 1998 heat input values for this unit. The source's requested 1998 value is only slightly higher than the value as submitted by PA DEP.

Action Taken: The 1998 heat input data for this unit not subject to the Acid Rain Program were revised based on data for the ozone season provided by the commenter.

8. Gilberton Power Company (IX-D-33)

Requested Changes: The commenter requested changes to 1997 and 1998 heat input for the unit not subject to the Acid Rain Program Gilberton Power (AB-NUG). Commenter also provided heat input for 1995 and 1996. PA DEP requested that the facility be split into two units (031, 032) and provided 1997 and 1998 heat input for both units. When PA DEP's data for 031 and 032 are summed, the 1997 and 1998 heat input data requested by Gilberton Power for the entire facility are slightly higher than the data submitted by PA DEP.

Action Taken: The 1997 and 1998 heat input data for this unit not subject to the Acid Rain Program were revised based on the data provided by the commenter. The facility was not segmented into units 031 and 032 as suggested in the letter submitted by PA DEP in response to the NODA. That letter provided heat input data based upon prorating the annual heat input, but PA DEP's letter also supported using data provided for the ozone season from sources. The EPA has used data provided by the source for the entire facility for the ozone season, rather than using annual data for two units provided by the PA DEP. The source's requested revisions to 1995 and 1996 data were not accepted because: (1) as a general rule, EPA specifically stated in the NODA that 1995 and 1996 data comments would not be considered for EGUs; (2) the existing data for this facility is based on data provided by the source in response to the NO_x SIP call; and (3) the requested revisions are minimal (the current request would decrease the facility heat input by 1.2% in 1995 and 0.4% in 1996). Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

9. Inter-Power/AhlCon Partners (IX-D-45 and 113)

Requested Changes: The commenter requested changes to 1997 and 1998 heat input for the unit not subject to the Acid Rain Program Colver Power Project (1). The heat input is listed as zero for both 1997 and 1998 in the large EGU inventory. Commenter's ozone season heat input in the second comment letter received (IX-D-113) is based on seasonal heat input values. PA DEP reports were provided to document the heat input changes. PA DEP also submitted 1997 and 1998 HI data for this unit.

Action Taken: The heat input data for this unit not subject to the Acid Rain Program were revised based on the data for the ozone season provided by the commenter.

10. Williams Generation (IX-D-49)

Requested Changes: Commenter requested a change in the 1998 heat input for the unit not subject to the Acid Rain Program listed as Continental Energy Associates (TURBN). In addition the commenter requested a change in the name of the facility from Continental Energy Associates to Williams Generation Company-Hazelton. Commenter provided copies of PA DEP annual emission summary reports to support heat input change. PA DEP also provided 1998 heat input data for this unit.

Action Taken: The 1998 heat input for this unit not subject to the Acid Rain Program was revised based on the data provided by the commenter. The name has been revised to reflect ownership by Williams Generation.

11. City of Philadelphia (IX-D-55)

Requested Changes: Commenter identified units that may be large EGUs, but are not listed in the large EGU inventory. The units include two units at Grays Ferry (NEDS ID 54785, units 25 and CT.HRSG) used principally for district heating, and three units at the Trigen facility (NEDS ID 4942, units 23, 24, 26). Gray's Ferry is a new facility in 1997, which commenter previously recommended be removed from the EGU inventory. There were no data provided on the Trigen units.

Action Taken: No action was necessary or appropriate for these units. The Gray's Ferry units are considered new units and would be eligible to receive allocations under the new source set-aside since they began operations in 1997. The Trigen units are included in the current inventory as Schuylkill Station (plant ID 50607). No data were provided that would enable EPA to segment this facility into multiple units and no 1997 or 1998 data were provided.

12. GPU Genco (IX-D-56 and IX-D-118)

Requested Changes: Commenter requested 1998 heat input changes for the following units not subject to the Acid Rain Program: Mountain (1, 2), Tolna (1, 2), and Wayne (1). Commenter also submitted 1997 and 1998 heat input data for the unit subject to the Acid Rain Program listed as Portland (5). Portland (5) had zero heat input for 1997 in the EPA inventory.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data provided by the commenter. The requested 1998 heat input revision to the unit subject to the Acid Rain Program was not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix. However, it appears that the 1997 heat input data for this unit has been mistakenly omitted from the data provided with the NODA. EPA has revised this value to be consistent with the most recent data as reported in the facility's emission report for the Acid Rain Program. The revised value is generally consistent with the commenter's request.

13. Wheelabrator Frackville Energy Co. (IX-D-64)

Requested Changes: Commenter provided heat input information for the 1995 through 1998 ozone seasons for the unit not subject to the Acid Rain Program listed as Wheelabrator Frackville. The commenter provided copies of annual PA DEP reports with monthly fuel use to support the heat input information. The 1996 and 1998 heat input data match the existing data for this unit, while 1995 heat input data are within 100 mmBtu of the data currently included in the EPA inventory. The 1997 and 1998 heat input values vary only slightly from data submitted in PA DEP's comments.

Action Taken: The 1998 heat input data for this unit not subject to the Acid Rain Program were revised based on the data provided by the commenter. The source's data for 1996 and 1997 match the current inventory and no change is necessary. The existing 1995 heat input value is based on information previously submitted by ARIPPA on behalf of the facility in response to the NO_x SIP call. Because of the insignificant (100 mmBtu) change in the 1995 value, the fact that prior comments on that data had been used to develop the current information, and because EPA specifically stated that 1995 and 1996 heat input data were not requested under the NODA, EPA has not adjusted the 1995 value for this unit. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

14. Duquesne Light Company (IX-D-66)

Requested Changes: Commenter requested 1997 and 1998 heat input revisions to the units not subject to the Acid Rain Program listed as Brunot Island (2A, 2B, 3), and requested 1997 heat input changes for Philips (3, 4, 5, 6). The commenter also requested changes to the 1997 and 1998 heat input for the unit subject to the Acid Rain Program listed as Cheswick (1).

The Brunot Island and Philips units were added to the inventory at the request of the commenter during the extension period. However, these units have no heat input because the units are on standby, although still permitted to operate.

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were not included based on the data and supporting materials provided by the commenter. The commenter was requesting the use of heat input based on permitted operating levels; the data used by EPA is based on actual operating experience only, not permitted operating levels. Since these units are not currently in operation, they have no actual operating data that EPA would use for calculating allocations. The requested heat input revisions to the unit subject to the Acid Rain Program also were not incorporated. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

15. PG&E Generating (IX-D-68)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input for the following units not subject to the Acid Rain Program: Northampton (1), Scrubgrass (1, 2). Commenter provided copies of PA DEP reports to document the heat input changes. PA DEP also submitted 1997 and 1998 heat input data for these units.

Action Taken: The heat input data for these units not subject to the Acid Rain Program were revised based on the data for the ozone season provided by the commenter.

16. Air Products and Chemicals (IX-D-70)

Requested Changes: Commenter requested changes to the 1998 heat input for the units not subject to the Acid Rain Program listed as Cambria Cogeneration (1, 2). CEM reports were provided as supporting documentation. Commenter provided 1997 data that are consistent with the existing inventory. PA DEP provided slightly different 1997 and 1998 in its NODA comments.

Action Taken: The requested value to the 1998 heat input for this unit not subject to the Acid Rain Program was included based on the data and supporting materials provided by the commenter. No revisions were necessary for the 1997 data.

17. PECO Energy (IX-D-73)

Requested Changes: Commenter requested changes to the 1995, 1997, and 1998 heat input for the units not subject to the Acid Rain Program listed as Croyden (11, 12, 21, 22, 31, 32, 41, 42) and Richmond (91, 92). The EPA inventory had zero heat input for the units in each of these years. PA DEP reports were provided to support the Croyden data, and a letter from the City of Philadelphia was provided to support the Richmond heat input data.

Action Taken: The requested revisions to 1997 and 1998 heat input data for these units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter. Revisions to 1995 heat input were not incorporated as requested since EPA as a general rule did not accept comments on 1995 and 1996 heat input data for EGUs as part of the NODA. EPA considered comments on these data elements only where the comment clearly indicated a significant error in the data, not merely missing data in one year where the data were available for other years. This comment would not affect the calculation of the state emissions budget for PA, but would result in a minor increase in the allocations to these units. Accepting this revision could potentially be a disadvantage to other similarly situated units that did not provide comments on 1995 or 1996 data in reliance on EPA's statement that such data requests would not be considered. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

18. First Energy (IX-D-79 and IX-D-115)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input data for the units subject to the Acid Rain Program Bruce Mansfield (1, 2, 3). Commenter notes that the heat input data are based on internal company operating reports and Part 75 CEM reports. No supporting documents or reasons for the changes are provided.

Action Taken: The requested heat input revisions to units subject to the Acid Rain Program were not incorporated. However, the differences from EPA's values are minimal for these requested revisions. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

19. Cinergy (IX-D-124)

Requested Changes: Commenter requested changes to the 1995, 1996 and 1997 heat input for the Westwood Generating Station. The plant was taken off-line on June 26, 1997, and closed. Revisions to the 1995 and 1996 data are significant (1995 heat input would decrease from approximately 15.5 million to 1.4 million and 1996 heat input would decrease from approximately 9.5 million to 1.2 million). Commenter provides 1997 heat input based on data from May and June.

Action Taken: The requested revisions to the 1997 heat input for this unit not subject to the Acid Rain Program were included based on the data provided by the commenter. The requested revisions to the 1995 and 1996 heat input data also were incorporated because it appears that the existing data, which had never been commented on in prior comment periods, were substantially in error. In addition, EPA notes that the existing data were not from Acid Rain CEM data, so that there is no conflict with existing Federal data sources. Moreover, the commenter's request for a substantial reduction for this plant will avoid a potential windfall of excess credits associated with the originally over-reported heat input for this retired facility. For all of these reasons, EPA has accepted this comment on 1995 and 1996 data even though as a general rule EPA has not considered comments on these data elements that were submitted in response to the NODA. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

20. Sunoco (IX-D-09)

Requested Changes: Commenter requests that the unit currently listed as Sun Refining and Marketing Co., Plant ID 0025, Point 090 in the non-EGU inventory be moved to the EGU inventory and notes that this unit is now owned by Florida Power & Light. Commenter does not indicate whether this unit is a large or small EGU and does not provide data with the exception of average 1995/1996 heat input. No supporting documentation was provided.

Action Taken: This unit was not added to the EGU inventory, but instead was retained in the non-EGU inventory. The unit's status in 1995 is the key consideration of whether the unit is considered an EGU or non-EGU. The commenter provided no data to suggest that the unit was operated as an EGU in 1995. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

21. PEI Power Corporation (IX-D-28)

Requested Changes: Commenter notes that it is the owner of the Archbald Power Station. Commenter adds that this unit went into commercial operation in 1990 and is allocated credits by the PA DEP as an electric generator under the OTC NO_x Budget Program. Commenter provides EIA 867 Forms to document the unit's operation from 1995 to 1997, but does not provide heat input data and does not specifically request the addition of this unit. PA DEP lists this unit as a small EGU (23.3 MW).

Action Taken: This unit was not added to the list of large EGUs affected by the section 126 final rule. Although the boiler at this facility is greater than 250 mmBtu/hr, the boiler serves a generator that is less than 25 MW. Thus, this unit is not an affected EGU under the Federal NO_x Budget Trading Program. The unit is listed in the overall NO_x SIP call inventory for purposes of establishing the overall statewide emissions budget for PA. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

O. SOUTH CAROLINA

1. SCE&G (IX-D-34)

Requested Changes: Commenter requested changes to heat input for 1997 and 1998 for the following Acid Rain units: Canadys (1, 2, 3), Cope (1), Hagood (--4), McMeekin (1, 2), Urquhart (1, 2, 3), Wateree (1, 2), and Williams (1).

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

P. VIRGINIA

1. LG&E Power (IX-D-42)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input for the following units not subject to the Acid Rain Program: LG&E Westmoreland Altavista (1, 2), LG&E Westmoreland Hopewell (1, 2), and LG&E Westmoreland Southhampton (1, 2). The 1997 and 1998 heat input data were listed as zero in the EPA inventory. Monthly fuel use was provided for each unit.

Action Taken: The requested heat input values for these units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter.

2. American Electric Power (IX-D-78)

Requested Changes: Commenter requested revisions to 1997 and 1998 heat input data for the units subject to the Acid Rain Program listed as Clinch River (1, 2, 3). No reason was given for the changes, and no documentation was provided.

Action Taken: The requested heat input revisions to units subject to the Acid Rain Program were not incorporated but are generally consistent with the most recent heat input values EPA included in the final section126 inventory and used to calculate allocations. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

3. Virginia Power (IX-D-80 and IX-D-135)

Requested Changes: Commenter requested changes to the 1998 heat inputs for the units subject to the Acid Rain Program listed as Yorktown (1, 2). The commenter requested changes in the 1998 heat inputs for the following units subject to the Acid Rain Program: Bellmeade (1, 2), Chesterfield (7), Darbytown (1, 2, 3, 4), Gravel Neck (3, 4, 5, 6). Documentation provided included Acid Rain CEM monitoring reports, and monthly fuel use data. The heat input revisions to the Yorktown units would decrease 1998 heat input for this facility significantly.

Action Taken: The requested heat input revisions for units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter. Since the requested 1998 heat input revisions to the Yorktown units subject to the Acid Rain Program were significant, EPA compared the existing heat input data in the inventory to the data as reported by the facility for the Acid Rain Program. This comparison revealed that EPA's 1998 heat input data for Yorktown (1,2) that were made available in the NODA were incorrect. The 1998 heat input values have been revised to reflect the data as reported in the facility's quarterly report for the Acid Rain Program, which are generally consistent with the commenter's requested revisions.

4. Conectiv (IX-D-116)

Requested Changes: Commenter requested changes in 1997 and 1998 heat input for the unit not subject to the Acid Rain Program listed as Tasley (10). The unit was listed with zero heat input for 1997 and 1998 in the EPA inventory. A breakout of monthly fuel use for the ozone seasons was provided.

Action Taken: The requested heat input values for this unit not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter.

Q. WEST VIRGINIA

1. West Virginia Department of Environmental Protection (IX-D-65)

Requested Changes: Commenter requested revisions to the 1997 and 1998 heat input data for the units not subject to the Acid Rain Program listed as Morgantown Energy Associates (1, 2) and Grant Town (ST).

Action Taken: The requested heat input values for units not subject to the Acid Rain Program were included based on the data and supporting materials provided by the commenter.

2. Allegheny Power (IX-D-07)

Requested Changes: Commenter requested changes to the 1998 heat input for the unit subject to the Acid Rain Program listed as Albright (1). No supporting documentation or reason for the requested revision was provided. Commenter notes that the revised value is based on their CEM reports.

Action Taken: The requested revision to the 1998 heat input for this unit subject to the Acid Rain Program was not incorporated. However, the difference from EPA's value is minimal for this requested revision. See response in general to revisions to heat input for units subject to the Acid Rain Program in Section III of this appendix.

3. Morgantown Energy Associates (IX-D-10)

Requested Changes: Commenter requested changes to the 1995 through 1998 heat input data for the unit not subject to the Acid Rain Program listed as Morgantown Energy Associates (1, 2). The heat input data requested are based on 5/12 of the annual heat input. Commenter did not submit supporting documentation for the heat input revisions. The EPA inventory has zero heat input for these units in 1997 and 1998. WV DEP also submitted 1997 and 1998 heat input data for these units, which were consistent with the data as submitted by the commenter. 1995 and 1996 heat input data in the current inventory reflects WV DEP's comments submitted in response to the NO_x SIP call during the extension period.

Action Taken: Revisions to the 1997 and 1998 heat input for these units not subject to the Acid Rain Program have been included based on data provided by WV DEP, which are consistent with the commenter's data. The requested revisions to 1995 and 1996 heat input were not incorporated because: (1) the current 1995 and 1996 heat input data for these units are based on comments as received from WV DEP in response to the correction notice for the NO_x SIP call; (2) the commenter supplied prorated annual data, not actual data for the ozone season; (3) the data provided do not vary significantly from the data provided by the WV DEP during the extension comment period; and (4) as a general rule, EPA is not acting on requests for 1995 or 1996 heat input changes because EPA specifically stated that it was not reconsidering those values as part of the NODA comment period. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

4. American Electric Power (IX-D-78)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat inputs for the following units subject to the Acid Rain Program: John E. Amos (1, 2, 3), Kammer (1, 2, 3), Kanawha River (1, 2), Mitchell (1, 2), Mountaineer (1), Phil Sporn (11, 21, 31, 41, 51), and Glen Lyn (6).

Action Taken: The requested heat input revisions to these units subject to the Acid Rain Program were not incorporated. See response in general to unit subject to the Acid Rain Program revisions in Section III of this appendix. Moreover, the differences are minimal for all of these revisions, with the exception of John E. Amos (3). For John E. Amos (3), EPA reevaluated the 1997 quarterly reports for the Acid Rain Program for this unit, and found that the existing data was supported by the data in the emission reports, and that the requested revision was in conflict with the data in the emission reports. Thus, no change was made for that unit.

5. Virginia Power (IX-D-80 and 135)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input for the units subject to the Acid Rain Program listed as Mt. Storm (1,2). Commenter submitted Acid Rain CEM monitoring reports, and monthly fuel use data as supporting documentation. The requested revisions would decrease 1997 heat input significantly for Unit 1, and would decrease 1998 heat input significantly for Units 1 and 2.

(2) Action Taken: Generally, EPA did not accept requested heat input revisions to units subject to the Acid Rain Program (see general response in Section III of this appendix). However, since the requested 1997 heat input revision to Mt. Storm (1) was significant, EPA compared the existing 1997 heat input for this unit to the data as reported by the facility for the Acid Rain Program, which revealed that the 1997 heat input as listed by EPA was incorrect. The data for this unit has been revised as requested because the commenter's value matches EPA's recalculated value based on a review of the data for the emission reports under the Acid Rain Program. The 1998 discrepancy noted in the comments was resolved during EPA's complete recheck of 1998 data for all units subject to the Acid Rain Program affected by the section 126 final rule, and no further unit-specific check on emission reports submitted for the Acid Rain Program was necessary.

R. WISCONSIN

1. Wisconsin Department of Natural Resources (IX-D-81 and 144)

Requested Changes: The commenter requested changes to the 1997 and/or 1998 heat input data for 17 units not subject to the Acid Rain Program. The commenter also included revisions to the heat input data for the following Acid Rain units: Alma (B4, B5), Bayfront (5), Blount St. (3, 7, 8), Genoa (1), J.P. Madgett (B1), Nelson Dewey (1,2), Pulliam (3,4,5,6,7,8), South Fond du Lac (CT1, CT2, CT3, CT4), Stoneman (B21, B22), and Weston (2).

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

2. Wisconsin Electric (IX-D-51)

Requested Changes: Commenter requested changes to the 1998 heat input for Germantown (1, 2, 3, 4). Monthly fuel consumption data is provided as supporting documentation. WI DNR also submitted 1998 heat input data for these units.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

3. Dairyland Power (IX-D-102 and IX-D-130)

Requested Changes: Commenter requested changes to the 1997 and 1998 heat input for the Acid Rain units listed as Alma (B4, B5), Genoa (1), and JP Madgett (B1). Commenter noted that the heat input data for Alma (B1, B2, B3), which were opted in to the Acid Rain Program in 1998, may have been included with the heat input data for Alma (B4, B5). WI DNR also submitted heat input data for these Acid Rain units which are consistent with the data as submitted by the commenter.

Action Taken: At this time, no action on the 1997 or 1998 data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

V. NON-EGU COMMENTS: UNIT-SPECIFIC HEAT INPUT DATA AND APPLICABILITY

A. ALABAMA

1. Solutia (IX-D-29)

Requested Changes: Commenter notes that coker #1 and #2 at their Decatur Plant are production facilities and should not be included as potentially affected non-EGUs. Commenter notes that this revision was requested in response to the correction notice and that the Inventory RTC issued in April 1999 notes that these units "will be reclassified based on the information modified in the inventory." Commenter also notes that these production facilities are less than 250 mmBtu/hour when evaluated on a Btu basis for the steam produced in the heat recovery unit. Commenter also reiterates their request that boiler #7 be included in the non-EGU inventory. Commenter also provides revised 95 heat input for all their units. No supporting documentation is provided.

Action Taken: The Coker #1 and #2 units have been classified based on the information provided in the comment. As this information indicated that these units were coke-fired (combusting coke, which is derived from fossil fuel), they are still considered affected sources for purposes of calculating statewide emissions budgets. Boiler #7 is included in the database, but is identified as a non-affected boiler because it has a liquid waste SCC code.

Because the source is in Alabama, the section 126 final rule does not address these units. If EPA takes further action that could affect these units and that would use these data, the Agency will address these comments at that time. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. International Paper (IX-D-46)

Requested Changes: Commenter requests revisions to 1995 heat input data for two units at IP Riverdale Mill and two units at IP Mobile Mill. Commenter also requests the addition of unit 014 at IP Mobile Mill (rated at 772 mmBtu/hr) and the addition of units 013 and 014 at IP Prattville Mill (rated at 640 and 534 mmBtu/hr, respectively). Commenter provides 1995 operating statistics reports and 1995 fuel consumption reports as supporting documentation.

Action Taken: At this time, no action on the heat input data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. The data provided for unit 014 at the Mobile Mill does not document clearly that the unit combusted more than 50 percent fossil fuel in 1995, and the reported SCCs indicate that this unit is in an unaffected category. Thus, this unit was not reclassified as a unit subject to controls for purposes of statewide emission budget calculation or potential applicability under the Federal NO_x Budget Trading Program. The SCC codes for the

Prattville units also indicate that this unit is in an unaffected category. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

3. Jefferson Smurfit Corporation (IX-D-99)

Requested Changes: Commenter requests that Jefferson Smurfit, Unit ID 008 be removed since it is not a fossil unit and noted that Jefferson Smurfit, Units 011 and 012 should be added since they are fossil units greater than 250 mmBtu/hour. No supporting documentation is provided.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that could affect these units, the Agency will address these comments.

No action was taken on this comment because the commenter failed to provide any supporting documentation for the changes requested. The SCC code indicates that Unit 008 is an oil-fired boiler. EPA also notes that unit 011 is currently identified in the non-EGU inventory as a process heater without 1995 seasonal emissions. EPA has no existing data for Unit 012. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

4. Gulf States Paper Corporation (IX-D-139)

Requested Changes: Commenter requests revisions to 1995 heat input data for its #1 power boiler (point ID 006) and requests the addition of point ID 013. Commenter provides facility records on fuel use, emission factors and emission rates as supporting documentation.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that could affect these units, the Agency will address these comments.

In order to add a unit to the non-EGU inventory, EPA requires full source data (stack parameters, throughput, emissions, etc.). See the correction and clarification notice associated with the extension comment period (December 24, 1998, 63 FR 71220). The commenter provided some, but not all, of these data elements. Thus, no action was taken on this request. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

B. CONNECTICUT

1. International Paper (IX-D-46)

Requested Changes: Commenter requests revisions to the 1995 heat input for the unit identified as International Paper Sprague Hill Unit 003, and also requests that the facility name be changed to Sprague Paperboard, Inc.

Action Taken: At this time, no action on the heat input data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

C. DELAWARE

1. Motiva Enterprises (IX-D-06)

Requested Changes: Commenter notes that the 1995 heat input data for the non-EGUs identified as Star Enterprise, Delaware City Plant, Units 002 and 012, are approximately twice the heat input as calculated based on fuel consumption. Commenter provides revisions to the 1995 heat input data, as well as 96-98 data, and requests that the plant name be listed as Motiva Enterprises, LLC. Commenter provides fuel use data as supporting documentation and notes that these data have also been reported to DNREC.

Action Taken: Based on the data provided by the commenter, EPA has revised the heat input data for the units using the average of the two highest heat input years for each unit in the 1995 through 1998 period. EPA has also changed the facility name as requested.

2. Delaware DNR (IX-D-82)

Requested Changes: Commenter notes that the non-EGUs listed as FMC Corporation, Units 031 and 033 are small non-EGUs (process spray dryers) with a heat input rating of 14 and 25 mmBtu/hour, respectively. Commenter requests that these units be removed from the list of affected sources.

Action Taken: EPA has reclassified these units as small non-EGUs based on the SCC code and capacity data provided. These sources had been added to the non-EGU inventory using data provided in the Delaware DNR comments during the extension period; these comments correct erroneous information in those prior comments. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

D. GEORGIA

1. International Paper (IX-D-46)

Requested Changes: Commenter requests revisions to 1995 heat input for International Paper: Augusta Mill (Units 007 and 008) and Union Camp Corporation (Units 018, 019, 020, and 021). Commenter also requests that the name for Union Camp be changed to International Paper Savannah Mill. Georgia Department of Natural Resources Regional NO_x SIP Call Modification Request Forms are submitted as supporting documentation.

Action Taken: At this time, no action on the heat input data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

E. ILLINOIS

1. Illinois EPA (IX-D-119)

Requested Changes: Commenter notes that the 1995 heat input data for non-EGUs are incorrect in a number of cases since they are inconsistent with the calculated heat input and that the emission factors used by EPA are inconsistent with standard emission factors. Commenter provides revised 1995 heat input values for a number of non-EGUs. Commenter also requested that Shell Oil Wood River Mfg., Plant ID 119090AA, Unit 721106330821 be classified as a large non-EGU potentially affected by the trading program. The agency indicated that they had requested this same change during the extension comment period.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.
For the Shell unit, EPA has revised the primary SCC code for this unit as requested. The effect of this change is to classify the boiler as a large non-EGU. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

F. INDIANA

1. International Paper (IX-D-46)

Requested Changes: Commenter requests that the non-EGU identified as Weston Paper & Mfg be removed from the listed of affected sources since it has a design heat input capacity of 177 mmBtu/hour. The appropriate Title V application section that indicates capacity is included as supporting documentation.

Action Taken: The section 126 final rule does not address this unit. If EPA takes further action that requires using these data, the Agency will address these comments. EPA has reclassified this unit as a small non-EGU based on the supporting documentation provided. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. Aluminum Company of America - Warrick Operations (IX-D-87 and 143)

Requested Changes: Commenter notes that EPA has incorrectly removed their Warrick Power Plant Units 1, 2, and 3 (Plant ID 6705) from the non-EGU inventory. Commenter adds that EPA had previously agreed in the Inventory RTC document issued in April 1999 that these units should be classified as large non-EGUs.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments. The units have been included in the large non-EGU inventory. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

3. Indianapolis Power & Light (IX-D-50 and IX-D-114)

Requested Changes: Commenter noted that IPL Perry K (11-18) should be treated as small EGUs and removed from the non-EGU inventory, based on EPA's clarification of EGUs versus non-EGUs. The commenter previously requested this change for Perry K (11-18) in their comment letter as docketed under A-96-56.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

The Perry K boilers (11 through 18) were included in the EGU inventory released in May 1999 as units 11, 12, and 14. However, the unit identifiers in that version of the EGU inventory were not accurately listed to reflect the fact that the heat input for the three units listed in the EGU inventory represents the entire plant (i.e., boilers 11 through 18). Because of the unit identifier issue, some of the units at the Perry K plant were mistakenly included in both the non-EGU and EGU inventories. EPA has removed the Perry K facility from the non-EGU inventory and has revised the unit identifiers in the EGU inventory to accurately reflect the fact that the total facility heat input and emissions data are representative of the combined data for the three stacks that serve boilers 11 through 18 (Unit 11 represents boilers 13 and 14, Unit 12 represents boilers 11 and 12, and Unit 14 represents boilers 15 through 18). During extension period comments, the commenter did not request that the facility-wide 1995 or 1996 heat input totals for these three segments be revised. Thus, no change to those values were considered necessary. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

4. LTV Steel Company, Inc. (IX-D-90)

Requested Changes: Commenter requests that EPA revise the 1995 heat input data in the non-EGU inventory for Units 020, 021, 022, 023, and 024 at the LTV Steel -Indiana Harbor Works facility. Commenter provides corrected values for 1995 heat input but specifically requests that EPA use the 1997 heat input data for allocation purposes.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

5. Southern Indiana Gas & Electric Company (IX-D-110)

Requested Changes: Commenter notes that EPA has listed SIGECO A.B. Brown units 1 and 2, F.B. Culley unit 3, and Warrick Power Plant unit 4 in both the EGU and the non-EGU lists. All of these units should be listed only in the EGU inventory. No supporting documentation is provided.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

The units have been removed from the non-EGU inventory because the units identified are clearly duplicate entries that appropriately belong in the EGU inventory only. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

6. U.S. Steel (IX-D-133)

Requested Changes: Commenter generally states that they cannot reconcile their plant sources with the U.S. Steel sources listed in the non-EGU database and lists the following point IDs for which further clarification is requested: 405, 701-OT6271, 701-OT6272, 701-OT6273, 701-OT6275, 701-OT6276, 720-O46268, 720-O46269, and 720-O46270.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

No action was taken in response to this comment because the commenter failed to specify what changes to the inventory are appropriate. Moreover, the facility information in the non-EGU inventory for this facility is based on comments received from the Indiana DEM (VIII-B-269). The commenter specifically requested that EPA adopt those comments during comments received during the extension comment period (see VIII-B-135). Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

G. KENTUCKY

1. Marathon Ashland (IX-D-131)

Requested Changes: Commenter requests that unit 061 at the Catlettsburg, Kentucky refinery (identified as Ashland Oil, Inc., unit 061) not be included in the non-EGU inventory as an affected unit, since fossil fuels provide less than 50% of the unit heat input. The unit is a fluid catalytic cracking unit (FCCU) carbon monoxide boiler. Most of the unit heat input is from process off-gas from the FCCU. No supporting documentation is provided.

Action Taken: It is EPA's understanding that the fuel the unit combusts is process gas derived from fossil fuel combustion. Such process gas is a fossil fuel under Part 97. Section 97.2 defines fossil fuel to include any solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal. Therefore, this unit remains in the inventory as a unit affected by the section 126 rulemaking. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

H. MARYLAND

1. Bethlehem Steel Corporation - Sparrows Point (IX-D-16)

Requested Changes: Commenter requests that the four non-EGUs identified as Bethlehem Steel, units 016, 017, 018, and 019 should be eliminated as affected units since they use greater than 50% non-fossil fuels (blast furnace gas). Commenter notes that the removal of these units was previously requested in their comments submitted in response to the NO_x SIP call and provides 1998 fuel usage data as supporting documentation.

Action Taken: Process gas derived from fossil fuel combustion is a fossil fuel under Part 97. This includes blast furnace gas. Section 97.2 defines fossil fuel to include any solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal. Therefore, units 016, 017, 018, 019 remain in the inventory as affected units. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

I. MICHIGAN

1. Rock-Tenn Company (IX-D-109)

Requested Changes: Commenter requests that the units at its facility (identified in the non-EGU inventory as Rock Tenn Company, Units 0001 and 0002) should be removed from the list of affected sources since these units are each rated at less than 250 mmBtu/hour. Commenter provides supporting documentation in the form of boiler inspection and equipment identification forms as submitted to the State.

Action Taken: The boiler capacity data for Units 0001 and 0002 have been modified based on the data provided by the commenter and the unit is no longer identified as an affected unit. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. Mead (IX-D-117)

Requested Changes: Commenter requests that EPA revise the 1995 heat input data for the non-EGU identified as Mead Paper Co, Unit 0340. Commenter provides 1998 heat input data and requests that this value be used instead of 1995 heat input since it is more representative of typical operations.

Action Taken: The section 126 final rule does not address this unit. If EPA takes further action that requires using the data for this unit, the Agency will address this comment.

J. MISSOURI

1. Trigen Energy Corporation (IX-D-98)

Requested Changes: Commenter submits 1995 heat input data for the Trigen-St. Louis (3, 5, 6) and Trigen-Kansas City (1A, 6, 7, 8) units. Commenter also submits 1996 heat input data for the St. Louis units and 1997 heat input data for the Kansas City units. Commenter notes that the St. Louis units were not included in the inventory.

Action Taken: At this time, no action on the heat input data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. EPA notes that the St. Louis facility is in the inventory under "Ashley Street Station." Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

K. NEW YORK

1. General Electric (IX-D-14)

Requested Changes: Commenter requests that the 1995 heat input be revised for the Silicone Products Division, Unit 018 as listed in the non-EGU inventory. Commenter provides 1995 fuel use data from Subpart Db reports as supporting documentation for the requested revision.

Action Taken: The section 126 final rule does not address this unit. If EPA takes further action that requires using the data for this unit, the Agency will address this comment.

2. International Paper (IX-D-46)

Requested Changes: Commenter requests that the 1995 heat input data be revised for Hudson River Mill, unit 007 and Ticonderoga Mill, unit 016. Commenter provides 1995 emissions statements as submitted to NY DEC (which includes fuel use data) as supporting documentation.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments.

L. NORTH CAROLINA

1. International Paper (IX-D-46)

Requested Changes: Commenter requests that the 1995 heat input data be revised based on 1998 heat input for International Paper: Riegelwood, unit 003 and 004. Commenter notes that fuel use data for 1995 was not available and that 1998 is the most representative of normal operations. Commenter provides facility records and the relevant calculations for 1998 heat input.

Action Taken: EPA has revised the heat input data for units 003 and 004 to reflect the two year average of EPA's 1995 heat input data and the commenter's 1998 heat input data.

M. OHIO

1. Goodyear Tire & Rubber (IX-D-27)

Requested Changes: Commenter notes that the 1995 heat input data should be revised for the non-EGUs listed as Goodyear Tire & Rubber, units B001 and B002. Commenter provides revised values and notes that these data are based on fuel use.

Action Taken: The 1995 heat input values for these boilers have been revised based on the data provided by the commenter.

2. AK Steel Corporation (IX-D-31)

Requested Changes: Commenter requests that the 1995 heat input data be revised for the four non-EGUs identified as AK Steel, units P009, P010, P011, and P012. Commenter requests a revised heat input value based on increasing the 1995 heat input by 6% to reflect the increased seasonal heat input (using prorated annual data) in 1997 and 1998. Commenter provides fuel use data as supporting documentation.

Action Taken: EPA has calculated a revised ozone season heat input for the units based on an average of the two highest years for the period between 1995 and 1998. EPA calculated the 1997 and 1998 ozone season data based on the 1997 and 1998 annual heat input data provided by the commenter, adjusting the data by a factor of 5/12 (five ozone season months in a year). As opposed to the methodology suggested by the commenter, this approach assures consistency with the averaging methodology used for units at other facilities, while allowing EPA to use the updated data provided by the commenter. The revised ozone season heat input based on the average of 1997 and 1998 ozone season heat input is approximately 16% higher than the value requested by the commenter.

3. Ohio EPA (IX-D-32)

Requested Changes: Commenter provides a list of all the non-EGUs that are included in their database as having a source ID that begin with "B" and the rated capacity of these units (1995 heat input data is not provided for these units). Commenter generally notes that there may some process sources in their list but that they did not intentionally provide a listing of these types of units. Commenter also notes that if EPA intends to include process heaters and furnaces, the non-EGU inventory is incomplete. Commenter does not specifically request the addition or deletion of any particular unit.

Action Taken: The EPA does not intend to include process heaters and furnaces in the non-EGU inventory. EPA identified several of the units on this list as process heaters and furnaces based on the SCC codes contained in the overall NO_x SIP call inventory. These units include BP Oil (Unit B015), all of the Clark Refining units, and Marathon Ashland (B029). EPA was able to match the remaining large non-EGUs on OH EPA's list to affected boilers in EPA's inventory, with the exception of Mead Fine Paper (B013) and WCI Steel (B002). The data for the Mead boiler in EPA's inventory indicates that this unit is primarily a wood/bark boiler; only boilers that use primarily fossil fuels are affected sources under the Federal NO_x Trading Program. The WCI Steel boiler is in EPA's inventory, but the inventory has no value for emissions for the 1995 baseline period. Therefore, while the unit may be an affected unit, it will not be allocated allowances. Thus, no action appears necessary to address this unit at this time for purposes of the inventory. EPA also used Ohio EPA's list of large non-EGUs to confirm comments from affected industry commenters in Ohio (see below) that argued that particular units should be reclassified as small boilers or that EPA's inventory included unidentified units that should not be classified as large. Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.”

4. Morton Salt (IX-D-36)

Requested Changes: Commenter notes that the non-EGUs identified as Morton Salt Div of Morton International, units B002 and B003, should be removed from the list of affected sources since they are rated at less than 250 mmBtu/hr. Commenter provides copies of their State (OH EPA) operating permits as supporting documentation.

Action Taken: EPA has modified the boiler capacity data for units B002 and B003 from the non-EGU inventory as requested based on the information supplied by the commenter. The fact that Ohio EPA does not list these boilers as large boilers is further corroboration for this revision. These units are no longer identified as affected units under the Federal NO_x Budget Trading Program. Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.”

5. Henkel Corporation (IX-D-37)

Requested Changes: Commenter requests revisions to the 1995 heat input value for the non-EGU source listed as Henkel Corp - Emery Group, unit B027. Commenter requests a significant reduction in the 1995 heat input value and provides fuel use data and the 1995 OH EPA Emission Statement as supporting documentation.

Action Taken: EPA has revised the 1995 heat input data for the units as requested.

6. WCI Steel (IX-D-39)

Requested Changes: Commenter requests revisions to the 1995 heat input values for the non-EGU sources listed as WCI Steel, Inc, units B001 and B004. Commenter provides fuel use data as supporting documentation.

Action Taken: EPA has revised the 1995 heat input data for the units as requested.

7. Republic Technologies International (IX-D-48 and 52)

Requested Changes: In their letter docketed as IX-D-48, commenter requests that the non-EGU identified as Republic Engineered Steels, Facility ID 576050694, unit X001 be removed from the list of affected sources since this facility consists of two natural gas fired steel billet reheat furnaces and are neither industrial boilers nor turbines and are each rated at 131 mmBtu/hr. Commenter provides OH EPA Title V permit application forms as supporting documentation.

In their letter docketed as IX-D-52, commenter requests revisions to the non-EGUs identified as USS/Kobe Steel Company - Lorain Works, Facility ID 0247080229, units B007, B008, B009, and B013. Commenter notes that these units are now owned by Republic Technologies International and that only one of these units (B013) is a large non-EGU -- units B007, B008, and B009 have a heat input capacity of 225 mmBtu/hr and unit B013 has a heat input capacity of 380 mmBtu/hour. Commenter provides revised heat input data for these units. Commenter provides OH EPA Source Data Sheets as supporting documentation.

Action Taken: For Facility ID 576050694, EPA has reclassified the two reheat furnaces identified as unit X001 as small non-EGUs based on the information provided by the commenter and as corroborated by the fact that the unit is not identified in OH EPA's list of large boilers. For Facility ID 0247080229, EPA had not identified Unit B008 as a large non-EGU, so no revision was necessary for that unit. The boiler capacities for B007 and B009 at this facility were modified based on the data provided and as corroborated by the fact that the units are not identified in OH EPA's list of large boilers. For Boiler 013 at this facility, EPA has revised the heat input data for calculating allocations using the average of the two highest heat input years in the 1995 through 1998 period based on the data provided by the commenter. EPA has also changed the facility name as requested. Also see “Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version.”

8. BP Oil (IX-D-74)

Requested Changes: Commenter notes that some of their non-EGUs that are rated at greater than 250 mmBtu are not included in the inventory and should be added. Commenter requests that for the BP Oil Company, Toledo Refinery (currently listed with two large units B004 and B020), EPA should add units B006, B014, B015, and P007. Commenter provides revised 1995 heat input data for units B004 and B020 and provides new data for the units to be added. Commenter notes that the information provided has been submitted to the State in Fee Emission Reports.

Action Taken: The additional units (B006, B014, B015, and P007) are identified in EPA's inventory as process heaters, and were not added to the inventory. EPA revised the 1995 heat input data for the two affected boilers as requested based on supporting documentation from the commenter for the 1995 heat input data. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

9. LTV Steel (IX-D-89)

Requested Changes: Commenter requests revisions to the 1995 heat input in the non-EGU inventory for units at the LTV Steel Cleveland Works. Commenter also provides revisions to the plant IDs, unit IDs and heat input data for these sources which has the effect of eliminating some boilers as duplicates and reclassifying some units as unaffected boilers. Commenter provides 1997 heat input data for these units and requests that EPA use these data for allocation purposes since it is more representative of plant operations.

Action Taken: Based on this comment, the OH EPA list of large non-EGUs in Ohio, and the commenter's prior comments on the NO_x SIP call, EPA has eliminated the units associated with an old facility ID for this plant (ID 1318000078). The remaining affected boilers are all listed under the 1318001613 facility ID (units B001-B004, B007, and B905). EPA then used the heat input data provided by the commenter to establish the average of the two highest years between 1995 and 1998 as the revised heat input value for each of the affected boilers except B905. The commenter did not provide any data for this unit. The format of the comments suggest that the commenter may believe that this unit did not operate during the 1995 period or may be an unidentified unit. However, the commenter did not specify how EPA should address this unit and provided no supporting documentation concerning this unit. Therefore, EPA has not adjusted the inventory data for this unit based on the comments. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

10. Canton Drop Forge (IX-D-111)

Requested Changes: Commenter requests that their facility be removed from the list of sources with units affected under the Federal NO_x Trading Program. The commenter states that it does not have any unit that exceeds 250 mmBtu/hr. Commenter notes that this request was previously submitted in January 1999 in response to the NO_x SIP call. Commenter provides fuel use data and a detailed list of all the small non-EGUs at the Canton Drop Forge facility.

Action Taken: EPA has revised the boiler capacities for the applicable unit as requested based on the information provided by the commenter. With this modification, none of the units at this facility is identified as an affected unit under the Federal NO_x Trading Program. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

N. PENNSYLVANIA

1. Pennsylvania DEP (IX-D-24)

Requested Changes: Commenter requested revisions to a number of non-EGUs and noted that their revisions are based on actual 1995 data contained in the PA DEP AIMS emission inventory system. PA DEP also suggested that EPA use seasonal heat input data provided in comments directly from affected facilities instead of PA DEP's data which is based in part on annual data. Commenter also provides data for several non-EGUs that should be added to the inventory. Commenter notes that it is not possible to obtain an accurate match for the non-EGUs labeled Texas Eastern Gas Pipeline Company and Bethlehem Steel Corporation and requests that EPA provide additional information on these sources so that the appropriate data may be provided and included in the inventory.

Action Taken: The inventory was modified to reflect heat input data provided by Pennsylvania for sources which did not provide heat input data. Most of the requested additions are addressed in comments submitted by the affected facilities (see below). For the General Electric units identified as units to be added (Plant ID 009, Unit IDs 032 and 039), EPA added Unit 032 as requested. However, Unit 039 (which PA DEP also identified as Boiler #9) was not added, since General Electric documented that Boiler #9 (which GE referred to as unit 035) has a design capacity of 241 mmBtu/hr in extension period comments (A-96-56-VIII-B-61). PA DEP did not submit documentation to contradict these earlier comments and show that this unit is greater than 250 mmBtu/hr. For the PECO Fairless Hills facility, PA DEP's comments indicated that unit 44, not unit 46, was the third unit in operation in 1995. EPA has modified the Unit ID information at this facility to reflect this comment.

With respect to PA DEP's concerns about identifying Bethlehem Steel units, EPA has acted on comments as received from the company to address those units (see below). No action was taken with respect to the Texas Eastern units mentioned by PA DEP because the comment did not provide sufficient information to revise the existing data for this facility. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. Sunoco (IX-D-09)

Requested Changes: Commenter notes that the data for the Philadelphia and Marcus Hook Pennsylvania refineries should be the same as that included in the PA DEP inventory. Commenter includes data for five boilers and two process heaters and implies that these units are all above 250 mmBtu/hour. Heat input data are provided but commenter does not provide specific data on maximum rated heat input capacity for each of these units. Commenter notes that one of the units at the Marcus Hook refinery (unit 090) is now owned by Florida Power and Light and should be classified as an EGU (this unit is the non-EGU currently identified as Sun Refining & Marketing, unit 090).

Commenter also provides comments on the non-EGU sources identified as Allied Chemical

Corp., units 050, 051, and 052. Commenter notes that these units are now owned by Sunoco and that units 050 and 051 should not be included in the list of affected sources since their heat load is 51% or greater supplied by phenol residue, a non-fossil fuel. Commenter provides revised heat input data for unit 052 and requests that EPA use 1998 heat input data for this unit since it is more representative of typical operations.

Action Taken: EPA has revised the SCC for units 050 and 051 to indicate that these units use phenol residue as their primary fuel. Thus, these units are not identified in the inventory as affected units. EPA notes that the City of Philadelphia had also requested removal of these units on the same basis in comments in response to the NODA (IX-D-55) and the extension public notice (VIII-B-218). In addition, EPA used the revised 1995 and new 1998 heat input data to calculate an average heat input value for unit 052 at this facility.

For the two process heaters identified in Sunoco's comments, no revision is necessary because these units are not affected units under the Federal NO_x Trading Program. For the unit identified as unit 90 at the Marcus Hook refinery, this unit remains classified as a non-EGU based on its operating status in 1995.

The remaining Sunoco comments request the addition of Unit 89 at the Marcus Hook refinery and the addition of Boilers 37-40 at the Philadelphia Refinery. EPA has modified the inventory to change the boiler capacity and SCC code for Unit 089 based on Sunoco's and PA DEP's comments. This unit is now identified as an affected unit. Boilers 37-40 are also identified as Units 020-023. The City of Philadelphia had previously requested that these units be added to the inventory, but had failed to provide stack and operating data. However, Units 020 and 021 were already included in the inventory, although only Unit 021 had been identified as a large, affected boiler. Based on OTC monitoring plan data, these four boilers emit to a common stack. With that information, and the comments from the City of Philadelphia agency and Sunoco, EPA has revised the inventory to include all four boilers with the same stack and operating data. Each of the boilers is identified as a large, affected unit. The 1995 heat input data provided by Sunoco was used for purposes of determining allocations to these units and Unit 089. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

3. P.H. Glatfelter Company (IX-D-18)

Requested Changes: Commenter requested that the non-EGU listed as Glatfelter, P.H. Company, unit 031 should be removed since it was shut down in January 1994. Commenter requests that P.H. Glatfelter, units 034 and 035 be added to the non-EGU inventory since they are boilers rated above 250 mmBtu/hr. The commenter suggests that unit 036 should be added as well, but as a non-EGU. The state agency (see below) indicates that this unit should be classified as a non-EGU. Commenter requests that for these additional units, an average heat input value based on 1995 through 1998 data should be used since it would be more representative of typical operations. Commenter provides fuel use data and PA DEP AIMS reports as supporting documentation.

Action Taken: Units 034, 035, and 036 have been added to the non-EGU inventory. The heat input for each of the units is based on the average of the two highest heat input values in the 1995 through 1998 period, as provided by the commenter. Unit 036 was added as a non-EGU rather than an EGU based on the comments provided by the state agency and a lack of information that the unit provides electricity for sale to the grid under a firm contract. The 1995 emissions and heat input for Unit 031 have been reset to zero based on the information provided concerning the 1994 shutdown, but this unit remains in the inventory since it is unclear whether the unit will be brought back on-line in the future. This information was corroborated by the state agency. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

4. International Paper (IX-D-46)

Requested Changes: Commenter requests that the 1995 heat input data be revised for the non-EGU identified as International Paper Lockhaven, units 033 and 034. The commenter requests that International Paper Erie Mill, unit 037 be added to the list of affected units since it has a design heat input of 326 mmBtu/hr, and has combusted less than 50 percent wood/bark fuel in at least on a year since 1995. Commenter provides 1995 operating statistics reports and 1995 emissions statements as supporting documentation.

Action Taken: EPA has revised the 1995 heat input data for the Lockhaven units using the values provided by International Paper. Erie Mill unit 037 was not added to the list of affected units. The data provided by the commenter documented that, in 1995, this unit used wood/bark as its primary fuel. The 1995 baseline year is the basis for determining whether a non-EGU is fossil fuel-fired. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

5. Tosco Refining (IX-D-57)

Requested Changes: Commenter notes that the non-EGU currently identified in the inventory as BP Oil, unit 033 is now owned by Tosco Refining. Commenter requests that the heat input data for this unit be revised and that four additional units at this facility be added to the non-EGU inventory. In addition to unit 033 (identified as No. 8 boiler), the commenter requests that unit 032 (No. 7 boiler), unit 038 (platformer heater), unit 044 (543 crude heater), and unit 045 (544 crude heater) be added. Commenter notes that it cannot substantiate the 1995 heat input data included for the BP Oil, unit 033 as currently included in the inventory. Commenter requests that the heat input data be based on the highest year (on a per unit basis) between 1995 and 1998, and provides heat input data for all five units based on either 1997 or 1998 data. Commenter provides PA DEP AIMS reports as supporting documentation.

Action Taken: Process heaters (units 038, 044, 045) are not affected units under the Federal NO_x Budget Trading Program, and thus no revision was necessary for these units. The inventory has been revised so that Unit 032 (No. 7 boiler) is identified as an affected unit. The base year heat input has been revised to reflect the average of the two highest heat input years in the 1995 through 1998 period. The allocation table has been revised to reflect ownership by Tosco Refining of unit 033. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

6. Merck Manufacturing (IX-D-58)

Requested Changes: Commenter requests that the non-EGU identified as Merck Sharp & Dohme, unit 034 be removed from the list of affected sources since it is below 250 mmBtu/hour. Commenter also requests that the heat input data be revised for Merck Sharp & Dohme, unit 039 based on 1996 through 1998 data since 1995 heat input is not representative of typical operations. Commenter provides State emissions statements as supporting documentation.

Action Taken: EPA has removed unit 034 from the non-EGU inventory as requested, and as corroborated by PA DEP's comments. The heat input data for unit 039 has been revised to reflect the average of the heat input data for the two highest years between 1995 and 1998 as provided by the commenter. The two highest years are 1997 and 1998. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

7. Bethlehem Steel Corporation (IX-D-71)

Requested Changes: Commenter requests that all six of their non-EGUs be removed from the non-EGU inventory. Commenter notes that units 051, 147, 041, 042 and 067 are fired primarily with non-fossil fuel, that units 147 and 132 are process units, and that unit 132 was shut down in 1994. Commenter adds that Bethlehem's operations in Bethlehem, PA have been shutdown. Commenter provides the 1995 emission certification reports and fuel use data as supporting documentation.

Action Taken: EPA has removed units 051, 132, and 147 from the list of affected units. The commenter documents that Unit 051 has a maximum rated heat input of 95 mmBtu/hr, and that Unit 147 is a process unit not covered by the Federal NO_x Trading Program. In addition, Bethlehem Steel and PA DEP both indicate that Unit 132 is a coal dryer that was shutdown in 1994. This unit has been removed completely from the inventory. Units 041, 042, and 067, which burn primarily coke oven gas, will remain in the inventory as affected units. Process gas derived from fossil fuel combustion is a fossil fuel under Part 97. This includes coke oven gas. Section 97.2 defines fossil fuel to include any solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal. The 1995 heat input data for these units (041, 042, 067) have been revised based on Pennsylvania emission reports provided by Bethlehem Steel. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

8. LTV Steel (IX-D-91)

Requested Changes: Commenter requests that the 1995 heat input data be revised for the non-EGUs listed as LTV Steel Company - Pittsburgh Works, units 015, 017, 019, and 021. Commenter notes that the revised values are derived from the emission fee reports as submitted to the Allegheny County Health Department.

Action Taken: The 1995 values were revised based on the data provided by the commenter.

9. Proctor & Gamble (IX-D-129)

Requested Changes: Commenter requests that the Proctor & Gamble Paper Products Company - Mehoopany Site, unit 035 be included as a large non-EGU since it is a natural gas fired cogeneration turbine with a rated heat input of 644 mmBtu/hr. Commenter also requests that 1998 heat input data be used for this unit since the 1995 data are not representative of typical operations.

Action Taken: The SCC code for this unit in the non-EGU inventory was revised from SCC 20200601 to SCC 10200601. Based on that revision, the unit is identified as a large non-EGU and an affected unit. EPA used the existing 1995 data and the 1998 data provided by the commenter to establish an average heat input for this unit for purposes of calculating allocations. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

O. SOUTH CAROLINA

1. Stone Container (IX-D-35)

Requested Changes: Commenter submitted revised values for 1995 heat input, and a new emission point ID for the non-EGU listed as Stone Cont: Florence. South Carolina annual emission inventory reports were attached as supporting documentation. Ozone season heat input was based on 153/365 fraction of the annual heat input.

Action Taken: At this time, no action on the heat input data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

2. International Paper (IX-D-46)

Requested Changes: Commenter requested removal of International Paper (IP) Georgetown (004) from the inventory. The unit represent two boilers which each burn greater than 50% bark. Commenter also requested a change in owner identification for Union Camp Eastover to IP Eastover. South Carolina NO_x SIP Call Non-EGU Budget Certification forms were provided as supporting documentation.

Action Taken: The section 126 final rule does not address these units. If EPA takes further action that requires using these data, the Agency will address these comments. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

3. DuPont (IX-D-83)

Requested Changes: Requested the use of 1997 heat input for May Plant (014), and 1998 heat input for May Plant (015), instead of 1995 heat input. The input was calculated based on steam output, boiler efficiency, and Btu/lb steam factor. Monthly fuel reports from the supplier are provided as supporting documentation.

Action Taken: At this time, no action on the heat input data is necessary because these units are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

4. Eastman Chemical (IX-D-107)

Requested Changes: Commenter requested changes for the Carolina Eastman plant. Changes included the removal of (006) which has a maximum rated heat input less than 250 mmBtu/hr, changes in 1995 heat input for units (N02, N05), and the use of 1997 heat input for units (N01, N03, N04). Commenter submitted fuel use data and South Carolina NO_x SIP Call Non-EGU Budget Certification forms as supporting documentation for heat input changes.

Action Taken: At this time, no action on the heat input data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

P. TENNESSEE

1. DuPont (IX-D-83)

Requested Changes: Commenter requested changes to the 1995 heat input for the Davidson County plant units (OP1, OP3). Commenter submitted local health department ozone season emission inventory reports, and monthly fuel use data as supporting documentation.

Action Taken: At this time, no action on the heat input data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

Q. VIRGINIA

1. Westvaco (IX-D-25)

Requested Changes: Commenter requested changes to the 1995 heat input data for the non-EGUs listed as Westvaco Corp (001, 002, 003, 004, 005, 011). Heat input was based on 1995 Source Registration Update for the Virginia Department of Environmental Quality (VADEQ).

Action Taken: The 1995 heat input values were revised based on the data and documentation provided by the commenter.

2. Celanese (IX-D-41)

Requested Changes: Commenter requested a change in the 1995 heat input for unit (007) at the Hoechst Celanese Corp. Plant (00004). The commenter also requested a change in the plant name to Celanese Acetate LLC.

Action Taken: EPA has revised the 1995 heat input data for the units as requested based on the data and documentation provided, and changed the facility name.

3. International Paper (IX-D-46)

Requested Changes: The commenter requested changes in the 1995 heat input for units (003, 004) at what was the Union Camp Corp/Fine Paper Division. The commenter also requested a name change for the facility to International Paper Franklin Mill. A spreadsheet with 1995 monthly ozone season fuel data was provided.

Action Taken: EPA has revised the 1995 heat input data for the units as requested based on the data and documentation provided. EPA also revised the plant name to reflect the change in ownership.

R. WEST VIRGINIA

1. West Virginia Department of Environmental Protection (IX-D-65)

Requested Changes: Commenter requested changes in the 1995 heat inputs for a number of non-EGU units in West Virginia. Commenter noted that 1998 heat input should be used for the DuPont Belle facility.

Action Taken: With the exception of the DuPont Belle facility, EPA has revised the 1995 heat input data for the West Virginia non-EGU units as requested for each unit that matched a large non-EGU previously identified by EPA. The WV DEP noted that nearly all of these values had been confirmed independently by the affected sources. The DuPont Belle facility is discussed below in response to the DuPont comment (IX-D-83).

The WV DEP comment also identified two additional units that the state agency believed should be considered large non-EGUs. First, the state agency provided 1995 heat input for the North Branch Power Station (Plant ID 00014, Unit ID 018). The Agency had identified this unit as a large, affected non-EGU but without NO_x emissions in 1995. Given the small amount of heat input identified by WV DEP (less than 5,000 mmBtu), EPA has added heat input only for this unit as requested by the state agency. The second unit is Weirton Steel (Plant ID 00001, Point ID 030). The EPA had included multiple boiler segments in its inventory for this unit but had not identified the boiler segments as the primary emission points for this unit. Based on this comment, EPA has added this unit to the list of large affected non-EGUs, and modified the heat input provided by the WV DEP (which the state agency states was verified by the source). Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. DuPont (IX-D-83)

Requested Changes: Commenter requested the use of 1998 ozone season heat input as more representative than 1995 for Dupont-Belle (612). Commenter submitted fuel purchase records for 1998 as supporting documentation.

Action Taken: EPA used the existing 1995 data and the 1998 heat input data provided by the commenter to develop an average value heat input for this unit, consistent with the approach taken for other units.

S. WISCONSIN

1. International Paper (IX-D-46)

Requested Changes: Commenter requested revised 1995 heat input for International Paper Thilmany. Commenter also requested that this unit be listed as International Paper Kaukana. Monthly ozone season fuel use was provided as supporting documentation.

Action Taken: At this time, no action on the heat input data is necessary because this facility is not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments. No change to the facility name was made at this time because it has no regulatory impact. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."

2. Wisconsin Department of Natural Resources (IX-D-81)

Requested Changes: Commenter requested changes in the 1995 heat input for a number of non-EGU units in the States. Heat input was based on fuel use, heat content, and operation by quarter reported in the 1995 Air Emissions Inventory. Commenter notes that the 1995 heat input data for Interlake Papers (B28) actually represents (B24) heat input since boiler (B28) replaced boiler (B24) after 1995. Commenter also requested addition of Consolidated Papers Kraft Division (B21) and submitted the corresponding 1995 heat input to the non-EGU inventory.

Action Taken: At this time, no action on the heat input data is necessary because these facilities are not subject to the section 126 final rule. If EPA takes further action that requires using these data, the Agency will address these comments.

The Consolidated Papers unit is listed at 93 mmBtu/hr capacity and specific documentation of a different capacity was not provided. Thus, this unit has not been reclassified for purposes of calculating the statewide emissions budget for WI. Also see "Responses to the 2007 Baseline Sub-Inventory Information and Significant Comments for the Final NO_x SIP Call and Proposed Rulemakings for Section 126 Petitions and Federal Implementation Plans, Technical Amendment Version."